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**Kids Will Be Kids:
Raising the Age of Criminal Responsibility in Texas**

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by

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Report

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Dedication

I dedicate this professional report to the women of Del Valle Correctional Complex who prove each day that author Bryan Stevenson is right – we are all far more than the worst thing we’ve ever done. These women opened my eyes to the complexities of mass incarceration and the unyielding strength of the human spirit. For them, I will always fight.

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Abstract

Kids Will Be Kids: Raising the Age of Criminal Responsibility in Texas

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The University of Texas at Austin, 2016

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The federal government draws the boundary between childhood and adulthood at age 18 for activities such as casting a ballot, joining the military, buying a cigarette, and serving time in adult prisons. Texas, however, defies this guideline in one significant respect. Here, the age of criminal responsibility is 17 years old. Thus, Texas lawmakers consider 17-year-olds mature enough to serve time in adult prisons but too immature to sit on the juries that send them there. The departure of Texas statute from federal policies ignores the science of brain development and contradicts cost-benefit analyses. Most importantly, the Texas law jeopardizes the lives of vulnerable youth and fails to improve public safety within local communities.

Though the vast majority of arrested 17-year-olds commit minor crimes, the consequences of an adult conviction are far from minor. This report examines the impacts of treating 17-year-olds as adults in the criminal justice system. Impacts include higher risks of physical and sexual victimization, psychological trauma, developmental delays,

and long-run economic losses. Together, these effects reach far beyond a teenager's stay in prison to inflict damage across families, communities, and generations of Texans.

Fortunately, there is a better way to manage 17-year-olds who are highly susceptible to the negative impacts of incarceration. In recent years, several states raised their ages of criminal responsibility to divert teens away from the dangers of adult correctional facilities. These states then experienced three levels of benefits:

1. Micro-level improvements to each teenager's neurological and psychosocial development;
2. Mezzo-level public safety advantages; and
3. Macro-level increases to state and county coffers.

This report analyzes the benefits that teens, communities, and budgets could accrue by aligning Texas' age of criminal responsibility with federal standards. Finally, the report outlines practical recommendations for raising the age of criminal responsibility in Texas. Only then will vulnerable 17-year-olds receive the protection and opportunities that they require to become productive community residents.

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Chapter 1:

Introduction

In 1995, Rodney Hulin, Jr. entered the Clemens Unit, an adult prison facility in Brazoria County, Texas. He was sentenced to serve eight years in the facility for arson after he set a dumpster on fire in his hometown. The crime caused less than \$500 in property damage,¹ but it set off a series of traumatic events from which Rodney and his family would never recover.

Three days after his arrival at Clemens, Hulin was raped by a fellow prison inmate.² Though a medical exam confirmed the assault, correctional officials refused to transfer Hulin to protective housing. Standing at 5'2" and weighing only 125 pounds, Hulin became easy prey in the adult prison. For months, he was repeatedly raped, beaten, extorted, and threatened. After each incident, Hulin begged correctional officers for help. In one note to prison officials, he wrote, "I am afraid to go to sleep, to shower, or just about anything else. I am afraid that when I am doing these things, I might die at any time. Please, sir, help me."³ Clemens staff denied Hulin's pleas, stating that his case did not meet the "emergency criteria" required for a transfer to protective custody.⁴ Prison officials instead gave Hulin one piece of simple advice: "grow up."⁵

Hulin then took matters into his own hands. He began acting out in order to obtain placement in disciplinary segregation where at least he would be separated from his

¹ A. Wood, "Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller," *Emory Law Journal* 61 (2012): 1447, http://law.emory.edu/elj/_documents/volumes/61/6/comments/wood.pdf.

² M. Chammah, "Rape in the American Prison," *The Atlantic*, February 25, 2015, <http://www.theatlantic.com/politics/archive/2015/02/rape-in-the-american-prison/385550/>.

³ National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report* (June 2009): 69, <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

⁴ *Ibid*, 69.

⁵ *Ibid*, 69.

abusers. Once he was taken to solitary confinement, Hulin wrote a letter exclaiming that he was “tired of living.”⁶ On January 26, 1996, only 75 days after his arrival at Clemens, he tore up his bed sheet, tied one end to the locker above his cell door, and tied the other end around his own neck.⁷ Then, he jumped. Hulin spent the next four months in a coma, during which he was granted parole. On May 9, 1996, he died.

Rodney Hulin, Jr. was 17 years old.

THE PROBLEM WITH TEXAS’ AGE OF CRIMINAL RESPONSIBILITY

If Texas’ age of criminal responsibility mirrored policies found across the country, Hulin’s fate could have been remarkably different. The federal government draws the boundary between childhood and adulthood at age 18 for activities such as casting a ballot, joining the military, buying a cigarette, and serving time in adult prisons. Texas, however, defies this guideline in one significant respect. Here, the age of criminal responsibility (i.e., the age at which an individual is automatically treated as an adult after committing a crime) is 17 years old. In Texas, lawmakers consider 17-year-olds like Rodney Hulin, Jr. mature enough to be incarcerated in adult prisons but too immature to sit on the juries that send them there.⁸ The departure of Texas statute from federal policies contradicts both scientific research and cost-benefit analyses. Most importantly, the Texas law fails to protect child welfare, improve public safety, and advance evidence-based policy practices.

⁶ J. Mariner, “No Escape: Male Rape in U.S. Prisons,” *Human Rights Watch*, accessed January 11, 2016, <https://www.hrw.org/reports/2001/prison/report.html>.

⁷ M. Berryhill, “What Really Happened to Rodney Hulin,” *The Houston Press*, August 7, 1997, <http://www.houstonpress.com/news/what-really-happened-to-rodeny-hulin-6570750>.

⁸ M. Deitch, R. Breeden, and R. Weingarten, “Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas,” *American Journal of Criminal Law* 40, no. 1 (2012): 4, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

THE ADULT AND JUVENILE JUSTICE SYSTEMS

The age of criminal responsibility marks a clear statutory division between the juvenile and adult justice systems. Over time, that line has gradually changed, allowing more youth to stay in the juvenile justice system and out of adult prisons. In the 1700s, children as young as seven years old could be convicted as adults.⁹ In the 1800s, however, reformers created a movement to separate more youth from the adult justice system. Reformers established special facilities for delinquent children and provided rehabilitative programs to change each child's life course.¹⁰ In 1899, reformers in Illinois also developed the first juvenile court, and within 25 years, most states followed suit.¹¹ Over the next century, child welfare advocates altered informal practices in juvenile courts to mirror the policies and rights guaranteed in adult courts, such as the right to an attorney. More than 100 years later, one founding tenet of the juvenile justice system still remains unchanged: juveniles are different from adults and thus should be treated differently when they commit crimes.

Today, the juvenile and adult justice systems continue to employ divergent structures and philosophies. The adult system is a criminal system in which court and prison officials tend to prioritize punishment. Adorning the walls of many Texas prisons is the adult system's core motto: "*our* security is not for *your* convenience." In contrast, the juvenile system is a civil system that prioritizes rehabilitation. As a result, justice-involved youth receive treatment and programming designed to reorient personal values, encourage prosocial behaviors, and reduce recidivism rates.

⁹ American Bar Association, *Dialogue on Youth and Justice* (2007): 4, <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJfull.authcheckdam.pdf>.

¹⁰ Ibid, 5.

¹¹ Ibid, 5.

The structural and philosophical differences between the adult and juvenile justice systems point to a key truth: the age at which a person commits a crime is instrumental in determining his or her experience within the justice system. In Texas, most adjudicated teens who commit crimes on the day before their 17th birthday benefit from rehabilitative supports and age-appropriate programming. However, if teens commit identical crimes on the day they turn 17, they must face the punitive adult system in which the traumas of prison can follow individuals for a lifetime.

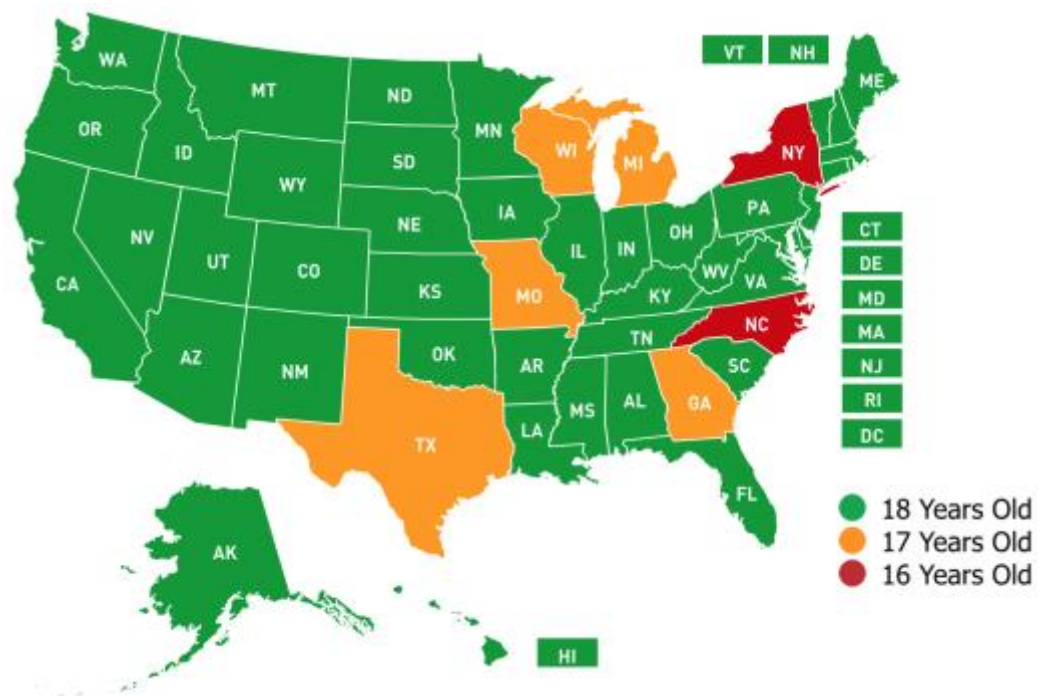
Since the 19th century, all states have established juvenile justice systems with similar rehabilitative tenets and structures. Despite these similarities, the age line that separates the juvenile system from the adult system varies across the nation. The federal government and 43 individual states set the age of criminal responsibility at 18 years old.¹² In 2015, Connecticut Governor Dannel Malloy even began a movement to raise the age policy in his state up to 20 years old in order to divert more teens away from adult criminal consequences.¹³ Scattered across the country, seven states adhere to harsher age policies that allow younger teens to face adult criminal charges by default.¹⁴ Five of these states, including Texas, set the age of criminal responsibility at 17 years old. The remaining two states (North Carolina and New York) set the age even lower at 16 years old. Figure 1 below illustrates the policies dictating the age of criminal responsibility across the United States.

¹² E.R. Moravec, "Raising Age to 18 for Adult Criminal Trials May Be a Nonstarter in Texas," *The Dallas Morning News*, March 1, 2015, <http://www.dallasnews.com/news/politics/state-politics/20150301-raising-age-to-18-for-adult-criminal-trials-may-be-a-nonstarter-in-texas.ece>.

¹³ S. Barr, "Connecticut Governor Suggests Raising the Age to 20," *The Juvenile Justice Information Exchange*, November 6, 2015, <http://jjie.org/connecticut-governor-suggests-raising-the-age-to-20/150489/>.

¹⁴ As of July 2016, the age of criminal responsibility was below the age of 18 in seven states. Weeks before this report was published, two states (Louisiana and South Carolina) passed legislation to raise the age of criminal responsibility to 18, while several other states (such as Missouri and Michigan) filed legislation to make a similar change.

Figure 1. Ages of Criminal Responsibility Across the United States



Creating using data from: National Conference of State Legislators, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, accessed April 2016, <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>.

The age of criminal responsibility marks the formal divide between the juvenile and adult justice systems. There is a mechanism, however, that bridges that divide by allowing justice officials to bypass the age of criminal responsibility in order to try youth as adults. Despite their young age, youth convicted of felonies may be transferred to the adult criminal justice system through a process called “certification.” In Texas, teenagers as young as 14 years old may be convicted for felonies as adults and sentenced to serve time in adult prisons.¹⁵ In theory, certification is reserved for the most dangerous and

¹⁵ The Attorney General of Texas, *Juvenile Justice Handbook* (2014): 25, https://texasattorneygeneral.gov/files/cj/juvenile_justice.pdf.

incorrigible youth. In reality, the most important factor in determining a teenager's assignment to the juvenile or adult justice system is his or her county of conviction.¹⁶

THE PROFESSIONAL REPORT

In this professional report, I will examine the consequences of Texas' aberrant age policy on individual 17-year-olds, their communities, and the state as a whole. In Chapter 2, I will introduce the demographics and mental health needs of the 17-year-olds who commit crimes in Texas. The chapter also presents arrest data to uncover the types of criminal activities that bring teens into contact with the justice system in the first place. According to the Texas Department of Public Safety, the vast majority of crimes committed by 17-year-olds are minor, nonviolent offenses, such as larceny theft, marijuana possession, and drunkenness.¹⁷

In Chapter 3, I will review existing literature to determine the current and long-term impacts of treating 17-year-olds as adults in the criminal justice system. The chapter focuses on four main categories of impacts:

- **Physical impacts**, such as physical violence and sexual victimization;
- **Psychological impacts**, particularly those that result from the disproportionate placement of 17-year-olds in solitary confinement;
- **Developmental impacts**, including incarcerated 17-year-olds' unmet treatment, educational, and socialization needs; and
- **Economic impacts**, such as reduced earnings achieved by individuals with an adult criminal record.

¹⁶ M. Deitch, *Juveniles in the Adult Criminal Justice System in Texas* (2011): 13, <https://www.utexas.edu/lbj/sites/default/files/file/news/juvenilestexas--final.pdf>.

¹⁷ Texas Department of Public Safety, *2014 Crime in Texas* (2015): 76, <http://dps.texas.gov/crimereports/14/citCh9.pdf>.

I have also included an evaluation of the chapter's evidence to highlight gaps in current data and to recommend avenues for future research.

After reviewing the consequences of treating 17-year-olds as adults in the criminal justice system, Chapter 4 will describe the benefits that could be achieved if Texas legislators raise the state's age of criminal responsibility to at least 18 years old. Benefits exist at three levels of a 17-year-old's ecological system. Benefits include:

- **Micro-level benefits:** Individual teens could experience improved neurological and psychosocial development if they are served in the juvenile justice system.
- **Mezzo-level benefits:** Local communities could achieve better public safety outcomes if 17-year-olds obtain rehabilitative treatment in the juvenile system.
- **Macro-level benefits:** Texas as a whole could accrue net economic benefits if county and state governments place 17-year-olds in juvenile facilities and avoid violations of the Prison Rape Elimination Act.

I have also included an evaluation of the chapter's evidence to discuss the challenges of accurately predicting the monetary value of the three levels of benefits outlined above.

Finally, in Chapter 5, I will advocate for three key recommendations that can improve the treatment of justice-involved 17-year-olds in Texas. First, the 85th Texas Legislature should take advantage of current practical and political realities and raise the age of criminal responsibility from 17 to 18 years old. Second, legislators should form a diverse task force that will meet regularly before the new policy goes into effect in order to anticipate implementation challenges and foster stakeholder collaboration. Finally, legislators should work with the task force to design a matching grant program through

which counties may apply for aid as they begin to serve 17-year-olds within their local juvenile probation departments.

Chapter 2:

Who Are They? Demographics of the Target Population

Unlike the vast majority of their peers across the nation, 17-year-olds in Texas face the possibility of adult arrest and incarceration. In 2014, 514 Texans who were 17 at the time of their offense were admitted to adult prisons.¹⁸ In addition, 7,578 Texans who were 17 at the time of their offense were under adult community supervision in 2014.¹⁹

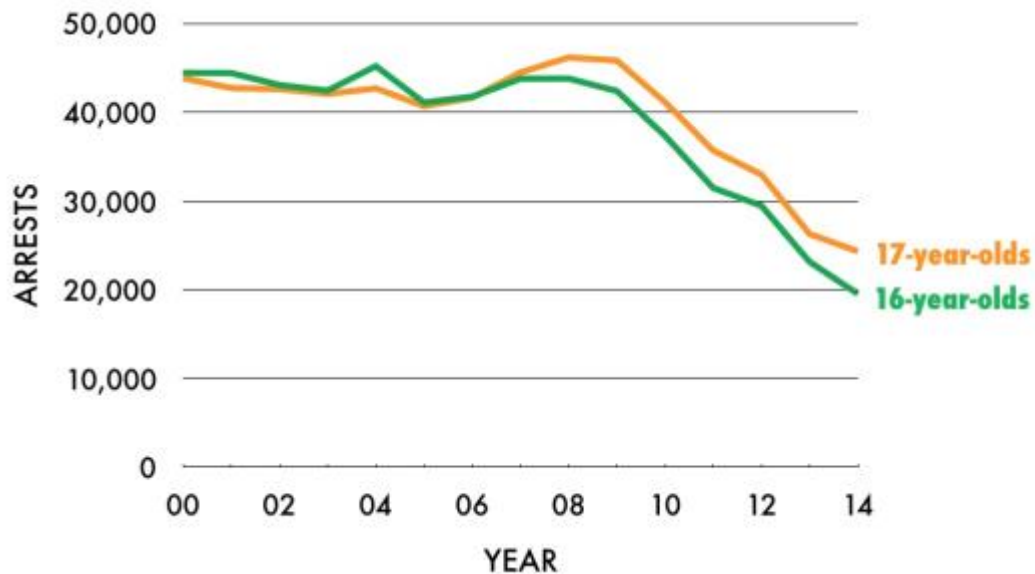
Over the past 15 years, Texas has seen a dramatic decrease in the number of teenagers arrested across the state. Between 2000 and 2014, the number of 17-year-olds arrested in Texas declined by about 45 percent.²⁰ The number of 16-year-olds arrested in Texas faced a similar decline of 56 percent. Figure 2 illustrates this drop in arrests for both age groups.

¹⁸ U. Parks, *Fiscal Note, 84th Legislative Regular Session in Re: HB 1205 by Dutton* [Memorandum] Austin, TX: Legislative Budget Board, April 1, 2015, 2, <http://www.capitol.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB01205I.pdf#navpanes=0>

¹⁹ *Ibid*, 2.

²⁰ Texas Department of Public Safety, *Crime in Texas Reports (2000-2014)*, http://dps.texas.gov/administration/crime_records/pages/crimestatistics.htm.

Figure 2. Decline in Arrests Among 16- and 17-Year-Old Texans



Source: Texas Department of Public Safety, *Crime in Texas Reports* (2000-2014), http://dps.texas.gov/administration/crime_records/pages/crimestatistics.htm.

CHARACTERISTICS OF 17-YEAR-OLDS IN THE JUSTICE SYSTEM

Three key features characterize teenagers entangled in the justice system. These features (described below in further detail) include:

- Teens who identify with racial and ethnic minority groups are overrepresented in the justice system.
- Males make up the vast majority of justice-involved 17-year-olds in Texas.
- Many justice-involved 17-year-olds have trauma histories and mental health treatment needs.

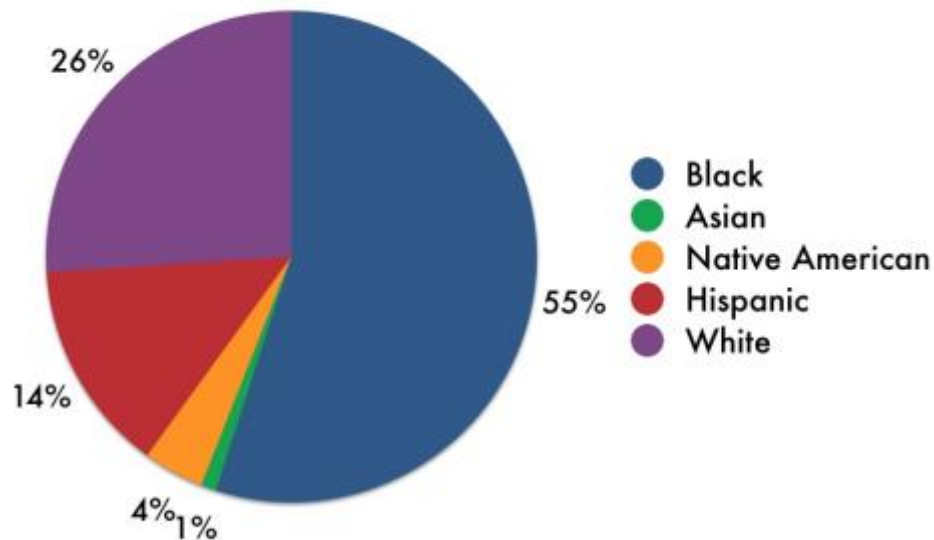
At most steps of the American justice system, minority groups fare worse than their white counterparts do.²¹ Unfortunately, teenagers trapped in the adult justice system adhere to the same trends.²² In 2013, researchers studied the racial and ethnic backgrounds of 16- and 17-year-olds arrested in New York, where both age groups are automatically treated as adults after committing a crime. The researchers found that 70 percent of youth who were arrested and 80 percent of youth who were sentenced to incarceration were either Black or Latino.²³ Though less severe than New York's data, nationwide statistics show similar racial and ethnic disparities among justice-involved teens. Figure 3 demonstrates the racial and ethnic breakdown of youth incarcerated in adult prisons and jails across the country.

²¹ The Sentencing Project, *Incorporating Racial Equity into Criminal Justice Reform* (2014): 3, <http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/incorporating-racial-equity-into-criminal-justice-reform.pdf>.

²² The Sentencing Project, *Disproportionate Minority Contact in the Juvenile Justice System* (May 2014): 7, <http://sentencingproject.org/wp-content/uploads/2015/11/Disproportionate-Minority-Contact-in-the-Juvenile-Justice-System.pdf>.

²³ Raise the Age New York, *Get the Facts*, accessed December 2015, <http://raisetheagency.com/get-the-facts>.

Figure 3. Racial and Ethnic Backgrounds of Youth in the Adult Justice System



Source: U.S. Department of Justice, *Youth in Adult Prisons and Jails: A National Assessment* (October 2000), 40, <https://www.ncjrs.gov/pdffiles1/bja/182503.pdf>.

Males are also overrepresented in the justice system. In 2014, 17-year-old males were arrested for three times as many crimes as 17-year-old females.²⁴ Other than prostitution and human trafficking crimes, 17-year-old males were arrested more times in every crime category than their female peers.²⁵

This gender discrepancy could result from a difference in criminal activity between males and females. Research shows that men are more likely than women to commit crimes, engage in violent behavior, and reoffend more quickly.²⁶ However, the gender disparity could also be attributed to differences in how the justice system responds to individuals who commit crimes. For example, in a 2011 study, the Bureau of Justice

²⁴ Texas Department of Public Safety, *2014 Crime in Texas* (2015): 76-79, <http://dps.texas.gov/crimereports/14/citCh9.pdf>.

²⁵ *Ibid.*, 76-79.

²⁶ A.G. Crocker, K. Hartford, and L. Heslop, "Gender Differences in Police Encounters Among Persons With and Without Serious Mental Illness," *Psychiatric Services* 60, no. 1 (2009): 86-87.

Statistics found that men experience more face-to-face contact with police officers.²⁷ Further, though men and women are equally likely to receive a traffic ticket from police, men are more likely to be arrested following a traffic stop, while women are more likely to receive a warning.²⁸ These differences in response do not cease upon arrest. Rather, women are more likely than men to be routed to jail diversion programs, such as mental health courts, when they enter the justice system.²⁹ In contrast, males (particularly men of color) are more likely to be terminated from diversion programs and sentenced to traditional periods of incarceration.³⁰

Finally, many justice-involved 17-year-olds struggle with mental health conditions and histories of trauma. Teenagers in the justice system are reportedly three times more likely to experience mental illness than youth outside of the justice system.³¹ Further, 75 percent of these teens have not only been exposed to violence, crime, and abuse; they have also *experienced* traumatic victimization themselves.³² These experiences can contribute to the development of post-traumatic stress disorder (PTSD), which is disproportionately found among youth in the justice system.³³ Figure 4 demonstrates the stark differences in

²⁷ C. Eith, and M.R. Durose, “Contacts Between Police and the Public, 2008,” *Bureau of Justice Statistics Special Report Series* (2011): 5, <http://www.bjs.gov/content/pub/pdf/cpp08.pdf>.

²⁸ *Ibid*, 9.

²⁹ B. Ray and M. Brooks Dollar, “Examining Mental Health Court Completion: A Focal Concerns Perspective,” *The Sociological Quarterly* 54, no. 4 (2013): 659.

³⁰ *Ibid*, 659.

³¹ National Conference of State Legislatures, *Adolescent Development & Competency: Juvenile Justice Guide Book for Legislators*, accessed March 2016, 8, <http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf>.

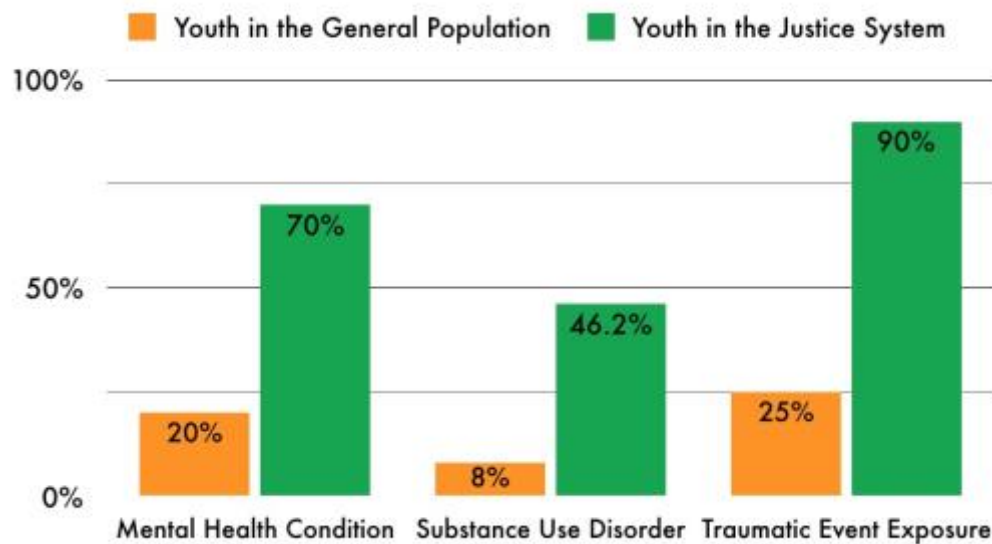
³² National Center for Mental Health and Juvenile Justice, *Strengthening Our Future: Key Elements to Developing a Trauma-Informed Juvenile Justice Diversion Program for Youth with Behavioral Health Conditions* (2015): 1,

<http://www.ncmhjj.com/wp-content/uploads/2016/01/traumadoc012216-reduced-003.pdf>.

³³ R.L. Listenbee, “PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth,” *U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention*, (June 2013): 2, <http://www.ojjdp.gov/pubs/239603.pdf>.

mental health-related backgrounds between youth in the justice system and youth in the general population.

Figure 4. Mental Health-Related Backgrounds of Youth in the General Population and Youth in the Justice System



Source: National Center for Mental Health and Juvenile Justice, *Strengthening Our Future* (2015): 1, <http://www.ncmhjj.com/wp-content/uploads/2016/01/traumadoc012216-reduced-003.pdf>

Taken together, the three characteristics described above convey a troubling truth: Texas' age of criminal responsibility does not impact all 17-year-olds equally. Rather, the brunt of Texas' age policy disproportionately falls on young males of color who have mental health treatment needs.

WHAT CRIMES ARE 17-YEAR-OLD TEXANS COMMITTING?

In 2014, 17-year-olds were arrested for about 24,000 offenses committed across Texas, representing less than 3 percent of total adult arrests for the year.³⁴ The teenagers'

³⁴ Texas Department of Public Safety, *2014 Crime in Texas* (2015): 76-79, <http://dps.texas.gov/crimereports/14/citCh9.pdf>.

offenses ranged from minor disorderly conduct to homicide. This wide range of alleged criminal activity raises a key question: what crimes are most 17-year-olds committing to land themselves in the criminal justice system?

The Myth of Teenage Super-Predators

In the 1980s and 1990s, criminologists answered this question by creating the myth of the “teenage super-predator.”³⁵ As the use of crack cocaine and private gun ownership increased across America, so too did violent juvenile crime rates.³⁶ Ivy League political scientist John DiIulio used the increase in violent juvenile crime to paint a picture for Americans of “radically impulsive, brutally remorseless youngsters”³⁷ who were more likely to “pack guns instead of lunches.”³⁸ In his book *Body Count* (1996), DiIulio and his co-authors predicted an unprecedented rise in youth violence over time; they also cautioned readers against engaging with the “youngest, biggest, and baddest generation any society has ever known.”³⁹

Dialogue about supposed teenage super-predators was not used to define *all* youth who committed crimes; rather, DiIulio’s language was racially coded.⁴⁰ His book and subsequent articles warned readers about the spread of crimes beyond inner cities – a term used to capture any area where youth belonging to racial and ethnic minority groups might congregate. DiIulio also developed a theory of origin for burgeoning super-predators:

³⁵ N. Bernstein, *Burning Down the House: The End of Juvenile Prison* (New York: The New Press, 2014): 71-80.

³⁶ Ibid, 72.

³⁷ W.J. Bennett, J.J. DiIulio, and J.P. Walters, *Body Count: Moral Poverty and How to Win America’s War Against Crime and Drugs* (New York: Simon & Schuster, 1996): 27.

³⁸ J.J. DiIulio, “The Coming of the Super-Predators,” *The Weekly Standard*, November 27, 1995, <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

³⁹ N. Bernstein, *Burning Down the House: The End of Juvenile Prison* (New York: The New Press, 2014): 72.

⁴⁰ Equal Justice Initiative, *The Super-Predator Myth, 20 Years Later*, April 2014, <http://www.eji.org/node/893>.

raised in homes where abuse was common and parental love was nowhere to be found, these teenagers were marred by “abject moral poverty” and were therefore incapable of feeling loyalty to anyone beyond their fellow gang members.⁴¹

The myth of the teenage super-predator spread public fear until the early 2000s when DiIulio’s predictions about youth violence proved utterly false. He projected that juvenile arrests across the nation would increase by 30 percent.⁴² As illustrated in Figure 2 (page 10), Texas experienced substantial decreases in arrests of both 16- and 17-year-olds.⁴³ Further, DiIulio warned that “teenage terrorists” would grow up “to do what comes naturally: murder, rape, rob, assault, burglarize, deal deadly drugs, and get high.”⁴⁴ In reality, however, the vast majority of crimes committed by youth are misdemeanors. Table 1 lists the top ten most common offenses for which 17-year-old Texans were arrested in 2014.⁴⁵ Within this list, law enforcement officials may automatically classify only three offense types (or 11 percent of top ten arrests) as felonies. So-called super-predators are thus more likely to come in contact with the justice system for committing minor, nonviolent crimes, such as larceny theft and marijuana possession, than for murder and rape.

⁴¹ J.J. DiIulio, “The Coming of the Super-Predators,” *The Weekly Standard*, November 27, 1995, <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

⁴² Ibid.

⁴³ Texas Department of Public Safety, *Crime in Texas Reports* (2000-2014), http://dps.texas.gov/administration/crime_records/pages/crimestatistics.htm.

⁴⁴ J.J. DiIulio, “The Coming of the Super-Predators,” *The Weekly Standard*, November 27, 1995, <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

⁴⁵ The figure was created using data from Texas Department of Public Safety, *2014 Crime in Texas* (2015): 76-79, <http://dps.texas.gov/crimereports/14/citCh9.pdf>.

Table 1. Arrests of 17-Year-Old Texans in 2014

Offense Type	Classification	Total Offenses in 2014
Larceny Theft (non-motor vehicle)	Depends on the value of property taken	5,061
Marijuana Possession	Depends on the amount in possession	3,685
Assaults (non-aggravated)	Misdemeanor	2,328
Drunkenness	Misdemeanor	1,048
Liquor Laws	Misdemeanor	997
Burglary	Felony	847
Disorderly Conduct	Misdemeanor	651
Vandalism	Misdemeanor	523
Aggravated Assault	Felony	470
Robbery	Felony	379

Source: Texas Department of Public Safety, *2014 Crime in Texas* (2015): 76, <http://dps.texas.gov/crimereports/14/citCh9.pdf>.

Though the super-predator myth was discredited, its impact still persists. In the 1990s, states across the nation responded to growing fears of delinquent youth by passing laws that made it easier to try young children as adults.⁴⁶ Over 25 years later, those laws continue to alter the lives of American youth.

In Texas specifically, super-predator rhetoric still influences lawmakers. In 2015, the 84th Texas Legislature had the opportunity to raise the age of criminal responsibility to 18 years old, but Senator John Whitmire (who chairs the Senate Criminal Justice

⁴⁶ N. Bernstein, *Burning Down the House: The End of Juvenile Prison* (New York: The New Press, 2014): 75.

Committee) opposed the change, citing the trouble that violent 17-year-olds could bring to the juvenile system.⁴⁷ Legislators feared that introducing 17-year-olds to juvenile detention facilities would place younger, more vulnerable youth at risk. Arrest data, however, show that, despite these fears, the vast majority of 17-year-olds are not incarcerated for committing life-threatening acts of violence.

Seventeen-year-olds in Texas are often mistakenly typecast as “stone-cold predators,”⁴⁸ and unfortunately, this mistake produces long-lasting negative consequences. Texas’ treatment of justice-involved teens as adults does not make the public safer. Instead, it simply puts these teens at greater risk for *their own* victimization. The next chapter will analyze the high victimization rates and other negative impacts that result when Texans treat 17-year-olds as adults in the justice system.

⁴⁷ P. Michels, “Too Young to Jail,” *The Texas Observer*, May 12, 2015, <http://www.texasobserver.org/texas-juvenile-justice-reform-and-raising-age-of-criminal-responsibility/>.

⁴⁸ J.J. DiIulio, “The Coming of the Super-Predators,” *The Weekly Standard*, November 27, 1995, <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

Chapter 3:

Individual Impacts of Treating 17-Year-Olds as Adults in the Texas Criminal Justice System

Texas predominately arrests 17-year-olds for minor offenses, but the impacts of an adult arrest and conviction are far from minor. Chapter 3 will review existing literature to address one crucial question: what physical, psychological, developmental, and economic impacts do 17-year-olds face in the adult criminal justice system? The impacts discussed in this chapter include:

- Physical and sexual victimization;
- Psychological damages that arise from adult imprisonment and solitary confinement;
- Developmental delays resulting from a lack of treatment, educational services, and positive socialization; and
- Future economic losses for 17-year-olds with an adult criminal record.

PHYSICAL IMPACTS

In adult facilities, 17-year-olds face threats to their personal safety. The teens experience higher rates of violence (particularly sexual violence) than both older inmates housed in adult facilities and younger teens housed in juvenile facilities.⁴⁹

A mixture of individual inmate characteristics, staffing structures, and cultural attitudes combine to facilitate physical and sexual violence against incarcerated 17-year-olds. First, most 17-year-olds are smaller in size, more inexperienced in the criminal justice system, and less cognitively and socially developed than incarcerated adults. These

⁴⁹ M. Deitch, R. Breeden, and R. Weingarten, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *American Journal of Criminal Law* 40, no. 1 (2012): 13. <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

individual attributes hinder the teenagers' ability to defend themselves against violent attacks.⁵⁰ Second, while the average staff-to-detainee ratio in juvenile facilities is 1:8, the average staff-to-inmate ratio in adult facilities is 1:64.⁵¹ Less consistent and intensive supervision allows violence to occur more frequently in adult facilities than in juvenile detention centers. Third, differing cultures dominate juvenile and adult correctional settings. In juvenile facilities, Texas teens under 17 benefit from a rehabilitative, youth-oriented atmosphere, while 17-year-olds in adult facilities must endure a more punitive, security-focused environment. The culture within adult correctional facilities decreases 17-year-olds' feelings of trust and their willingness to report violent victimization.⁵²

Physical Violence

The placement of youth in adult facilities was intended to decrease rates of violence among teenagers in the general population.⁵³ Criminologists justified youth incarceration by citing the deterrence hypothesis: with the threat of adult prison looming before them, 17-year-olds and their younger peers were expected to decrease their own violent behaviors in order to avoid punishments in the adult justice system.⁵⁴ Research, however, debunks

⁵⁰ J. Mariner, "No Escape: Male Rape in U.S. Prisons," *Human Rights Watch*, accessed January 11, 2016, <https://www.hrw.org/reports/2001/prison/report.html>.

⁵¹ A. Wood, "Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller," *Emory Law Journal* 61 (2012): 1453, http://law.emory.edu/elj/_documents/volumes/61/6/comments/wood.pdf.

⁵² N. Arya, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," *The Campaign for Youth Justice* (November 2007): 13, http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf.

⁵³ R. Hahn et al., "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," *Centers for Disease Control and Prevention* (November 2007), <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

⁵⁴ H. Entorf, "Expected Recidivism Among Young Offenders: Comparing Specific Deterrence Under Juvenile and Adult Criminal Law," *European Journal of Political Economy* 28, no. 4 (2012): 415.

this hypothesis. Instead, analysts find that teenagers are too shortsighted and cognitively underdeveloped to view adult imprisonment as a deterrent against impulsive behavior.⁵⁵

While adult incarceration does not deter teenage crime outside of prison walls, the practice does impact violence inside cellblocks. In a study of youth transfers to adult prisons, the Centers for Disease Control and Prevention (CDC) found that the placement of children under 18 in adult facilities tends to increase rates of violence among these youth by adding a vulnerable group to a tense environment.⁵⁶ The adult correctional system is already a dangerous place; incarcerated people in adult settings are up to 11 times more likely than children in juvenile detention centers to require medical attention following an inmate-on-inmate attack.⁵⁷ Introducing 17-year-old youth into adult prisons does not appear to decrease the teenagers' own violent behavior. Instead, this practice merely adds a defenseless, inexperienced group to the adult justice system, which exacerbates existing violence in these facilities.

Teenagers in the adult criminal justice system do not only face the risk of violence perpetrated by other inmates. Incarcerated people under 18 are also two times more likely than older inmates to report beatings at the hands of prison staff.⁵⁸ Further, these teens are 50 percent more likely than older inmates to be attacked with a weapon.⁵⁹ Injuries sustained during these beatings can be severe. For example, between 2012 and 2013 alone, 16- and 17-year-old jail inmates on New York's Rikers Island suffered 754 visible injuries,

⁵⁵ Ibid, 415.

⁵⁶ R. Hahn et al., "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," *Centers for Disease Control and Prevention* (November 2007), <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

⁵⁷ V. Schiraldi and J. Zeidenberg, "The Risks Juveniles Face When They Are Incarcerated with Adults," *The Justice Policy Institute* (1997): 2, http://www.justicepolicy.org/images/upload/97-02_rep_riskjuvenilesface_jj.pdf.

⁵⁸ Ibid, 3.

⁵⁹ Ibid, 3.

including broken jaws, long bone fractures, and lacerations requiring stitches.⁶⁰ In 2013, emergency alarms indicating serious altercations or disturbances were used about three times per day in the Rikers Island adolescent housing areas.⁶¹ Thus, New York's most vulnerable incarcerated population must survive in units plagued by the most turmoil and chaos. Like New York, Texas continues to house individuals under 18 in adult correctional facilities, despite the pervasive violence that teens disproportionately face at the hands of staff members and other incarcerated persons.

Sexual Violence

Rodney Hulin, Jr.'s experience of repeated sexual victimization in a Texas prison is not unique. Teenagers in adult prisons and jails across the nation report troubling rates of sexual victimization. In 2009, a federal commission studying prison rape found that people under 18 who are incarcerated with adults face the highest risk of sexual abuse in U.S. prisons.⁶² Commission members reported that youth are five times more likely than adults to be sexually assaulted while they are incarcerated.⁶³ Among those who have been sexually victimized, incarcerated individuals under age 18 are also eight times more likely than the average inmate to experience a substantiated incident of abuse (i.e., an assault that officials determine is "supported by a preponderance of evidence" after an investigation concludes).⁶⁴

⁶⁰ U.S. Department of Justice, U.S. Attorney of the Southern District of New York, *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island* (August 2014): 7, <http://www.nytimes.com/interactive/2014/08/05/nyregion/05rikers-report.html>.

⁶¹ *Ibid.*, 8.

⁶² National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report* (June 2009): 18, <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

⁶³ *Ibid.*, 42.

⁶⁴ National Archives and Records Administration, *Federal Register: National Standards to Prevent, Detect, and Respond to Prison Rape Final Rule*, 77, no. 119 (2012): 37128, <https://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>.

High rates of sexual assault among confined youth are not a new phenomenon. In a 1989 study, nine percent of youth confined in adult prisons reported that other inmates had raped or attempted to rape them during their period of imprisonment; in contrast, about two percent of youth in juvenile facilities reported the same experience.⁶⁵ In 1993, researchers also found that the odds of sexual victimization were eight times higher for an adult prison's youngest inmates than for its older inmates.⁶⁶ Decades later, 17-year-olds are still at risk. In 2009, people under 18 made up only one percent of the U.S. jail population, but they represented 21 percent of substantiated incidents of sexual assault in jail facilities.⁶⁷

Texas teens in adult prisons are at particular risk for sexual victimization. In 2007, the Bureau of Justice Statistics (BJS) conducted its first National Inmate Survey (NIS) to review and analyze the incidence of prison rape across the United States. In the study, researchers identified ten adult prisons with the highest prevalence rates of sexual victimization in the country; Texas was home to five of those facilities.⁶⁸ In a 2013 follow-up study, BJS analysts again named facilities with the highest rates of sexual violence. Researchers identified 11 male prisons with the highest rates of inmate-on-inmate sexual

⁶⁵ M. Forst, J. Fagan, and T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," *Juvenile & Family Court Journal* 40, no. 1 (1989): 10.

⁶⁶ V. Schiraldi and J. Zeidenberg, "The Risks Juveniles Face When They are Incarcerated with Adults," *The Justice Policy Institute* (1997): 2, http://www.justicepolicy.org/images/upload/97-02_rep_riskjuvenilesface_jj.pdf.

⁶⁷ National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report* (June 2009): 155, <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

⁶⁸ The five Texas prisons were: the Estelle Unit (Walker County), the Clements Unit (Potter County), the Allred Unit (Wichita County), the Mountain View Unit (Coryell County), and the Coffield Unit (Anderson County). Seventeen-year-olds are usually held in different facilities when they first enter the Texas prison system. However, once they reach the age of 18, they may become eligible for transfer to other facilities, including those listed above. See A. Beck and P. Harrison, "Special Report: Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007," *Bureau of Justice Statistics* (2007): 2, <http://www.bjs.gov/content/pub/pdf/svsfpri07.pdf>.

victimization; three were located in Texas.⁶⁹ BJS also found eight male prisons with the highest rates of staff sexual misconduct; two were located in Texas.⁷⁰ One Texas facility stood out among the rest – the Clements Unit in Potter County. Individuals incarcerated within the Clements Unit reported two troubling statistics. First, they experienced the highest rate of sexual assaults that involved physical force or the threat of force by staff.⁷¹ Second, they experienced the highest rate of coercion to engage in sexual activity without the use or threat of force by staff,⁷² despite this lack of force, incarcerated individuals have little power compared to prison staff members, which precludes inmates from legally consenting to engage in sexual activity.

For teenagers, sexual victimization often occurs within only two days of incarceration.⁷³ For others, like T.J. Parsell, the abuse starts even sooner. At 17 years old, Parsell pulled out a toy gun at a local Fotomat and stole \$53 from the cashier.⁷⁴ He was quickly arrested for armed robbery. Soon after, he sat across from a prison psychologist for an evaluation before he was formally admitted to one of Michigan's most notorious adult correctional facilities. The psychologist glanced at Parsell's skinny frame and warned the

⁶⁹ The three Texas prisons were: the Stiles Unit (Jefferson County), the Montford Psychiatric Facility (Lubbock County), and the Clements Unit (Potter County). See A. Beck, M. Berzofsky, R. Caspar, and C. Krebs, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12," *Bureau of Justice Statistics* (2013): 12, <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

⁷⁰ The two Texas prisons were: the Clements Unit (Potter County) and the Coffield Unit (Anderson County). Ibid, 13.

⁷¹ At the Clements Unit, 8.1% of incarcerated males reported sexual victimization involving force or the threat of force by staff. Ibid, 14.

⁷² At the Clements Unit, 8.7% of incarcerated males reported coercion to engage in sexual activity without the use or threat of force by staff members. Ibid, 14.

⁷³ V. Schiraldi and J. Zeidenberg, "The Risks Juveniles Face When They are Incarcerated with Adults," *The Justice Policy Institute* (1997): 2, http://www.justicepolicy.org/images/upload/97-02_rep_riskjuvenilesface_jj.pdf.

⁷⁴ T.J. Parsell, "Unsafe Behind Bars," *The New York Times*, September 18, 2005, <http://query.nytimes.com/gst/fullpage.html?res=9C06E2D81131F93BA2575AC0A9639C8B63>.

teenager about the abuse he would likely face. In his memoir, *Fish*, Parsell described the interaction.⁷⁵

“A pretty boy like you,” the psychologist added, “you’ll need to get a man. If you don’t get a man, you’ll be open game.”

“They’ll have to kill me first,” I said, sitting up in my chair.

“That can be arranged,” he said, calmly.

On Parsell’s first day in an adult prison, the psychologist’s prediction came true. Parsell was drugged and gang raped within hours of arriving at the facility. Then, his abusers flipped a coin to determine who would “own” the 17-year-old for the duration of his sentence. For five years, Parsell lived as “sexual chattel,” but the impacts of his abuse did not end when his sentence did.⁷⁶

The consequences of sexual assault in an adult correctional facility are long-lasting. Repeated abuses increase a young person’s probability of contracting HIV/AIDS, the incidence of which is five times higher in adult prisons than in the general population.⁷⁷ Sexual victimization may also cause teens to act out in disruptive ways in order to decrease their appearance of vulnerability or to obtain placement in solitary confinement away from their predators, like Rodney Hulin, Jr. did in the Clemens Unit. Disruptive behaviors can sever the youth’s access to evidence-based programming while he or she is kept in segregation. Further, disruptive behavior may negatively impact future parole board decisions and ultimately lengthen a 17-year-old’s stay within the dangerous prison environment. Finally, sexual victimization can cause teens to display psychiatric

⁷⁵ The interaction presented here was condensed slightly to remove explicit language. See T.J. Parsell, *Fish: A Memoir of a Boy in a Man’s Prison* (Philadelphia: Da Capo Press, 2006), xi.

⁷⁶ T.J. Parsell, “In Prison, Teenagers Become Prey,” *The New York Times*, June 5, 2012, <http://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/in-prison-teenagers-become-prey>.

⁷⁷ A. Wood, “Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller,” *Emory Law Journal* 61 (2012): 1451.

symptoms, such as suicidal ideation, self-harm behaviors, and delusions, either due to mental deterioration or as a means to gain access to a mental health professional.⁷⁸

Decades after Parsell's release from prison, he confessed that he still experienced psychiatric symptoms related to PTSD as a result of his sexual abuse. "I'm remorseful about the actions of my youth, and I accept responsibility for the choices I made," Parsell stated almost 30 years after his first day of incarceration, "but no one deserves to be raped."⁷⁹

Prison Rape Elimination Act of 2003

Correctional administrators and policymakers recognized prison violence and rape as a problem as early as 1934.⁸⁰ However, lawmakers did not pass formal legislation to address the issue until almost 70 years later. In 2003, Congress unanimously passed the Prison Rape Elimination Act (PREA) to implement a zero-tolerance policy for sexual violence in places of incarceration. The act created the National Prison Rape Elimination Commission to investigate the problem and to design standards aimed at decreasing sexual violence in prisons, jails, and other detention settings.

Most importantly, PREA included the "Youthful Inmate Standard" to further protect incarcerated youth who are at greater risk of physical and sexual victimization. The act defined "youthful inmates" as incarcerated individuals under 18 years old, a standard

⁷⁸ N. Arya, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," *The Campaign for Youth Justice* (November 2007): 13, http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf.

⁷⁹ T.J. Parsell, "Unsafe Behind Bars," *The New York Times*, September 18, 2005, <http://query.nytimes.com/gst/fullpage.html?res=9C06E2D81131F93BA2575AC0A9639C8B63>.

⁸⁰ A.N. Moster and E.L. Jeglic, "Prison Warden Attitudes Toward Prison Rape and Sexual Assault: Findings Since the Prison Rape Elimination Act (PREA)," *The Prison Journal* 89, no. 1 (2009): 66.

which diverges from Texas' age of criminal responsibility. To comply with the federal standard, facility administrators must follow three requirements:⁸¹

1. First, inmates under 18 in adult facilities may not be placed in housing units where they could have direct contact with adult inmates.
2. Second, outside of housing units, incarcerated individuals under 18 must remain out of "sight and sound" of all adult inmates. If youthful inmates are within sight and sound of adult inmates, the facility must provide adequate supervision to keep the groups from interacting.
3. Third, to comply with the first two requirements, facility administrators should not place youthful inmates in prolonged isolation. Administrators must also ensure that inmates under 18 are still given the educational and recreational services to which youth are entitled.

Unlike federal facilities, state prisons and county jails are not statutorily bound to comply with PREA. However, states that fail to meet PREA standards could ultimately lose five percent of their federal funding.⁸² The Youthful Inmate Standard complicates some states' ability to fully comply with PREA. Forced to separate 17-year-olds by sight and sound from the adult prison population, facility administrators must reserve entire units for small groups of youthful inmates. Administrators must also shut down entire adult units to ensure that the age groups do not interact with one another when staff members transport youthful inmates to the facility's recreational and medical service areas. This practice

⁸¹ National PREA Resource Center, *Youthful Inmates*, February 2013, <http://www.prearesourcecenter.org/faq/youthful-inmates>.

⁸² J. Cushman, Jr., "U.S. Issues Far-Reaching Rules to Stem Prison Rape," *The New York Times*, May 17, 2012, http://www.nytimes.com/2012/05/18/us/politics/us-sets-first-comprehensive-rules-to-stem-prison-rape.html?_r=0.

disrupts the adult population's activities, co-opts limited staff resources and time, and disincentivizes administrators from providing essential services to 17-year-olds.

Difficulties with compliance lead some states to ignore PREA regulations and forfeit federal dollars. Other states, like Kansas, transfer all youthful inmates with adult convictions to other states entirely in order to avoid the costs of housing teenagers separately.⁸³ Finally, some facilities (particularly jails) that lack the physical space to segregate 17-year-olds place the teens in isolated cells, which can both create and exacerbate symptoms of mental illness.⁸⁴ (For more information on solitary confinement and mental illness, see pages 31-34.)

Since PREA's passing, Texas policymakers have voiced clashing opinions about implementing the act in state prisons and county jails. In 2014, then-Governor Rick Perry described PREA standards as "counterproductive and unnecessarily cumbersome."⁸⁵ In a letter to former Attorney General Eric Holder, Perry asserted that PREA standards and compliance dates were "impossible" for many states to meet and that Texas would not spend its limited resources trying to do so.⁸⁶ At that time, however, at least ten other governors had already provided Holder with assurances that their states were successfully working toward established compliance deadlines.⁸⁷ In 2015, newly-elected Governor Greg Abbott assured federal officials that Texas would attempt to implement PREA

⁸³ Transferring the youth may protect them from experiencing physical and sexual violence at the hands of adult inmates, but the practice also separates the children from their local communities and support systems. See J. Lahey, "The Steep Costs of Keeping Juveniles in Adult Prisons," *The Atlantic*, January 8, 2016, <http://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/>.

⁸⁴ B. Butler, A.L. Fellow, and M. Simpson, "A Solitary Failure: The Waste, Cost, and Harm of Solitary Confinement in Texas," *The ACLU of Texas* and *The Texas Civil Rights Project of Houston* (February 2015): 48, <http://www.aclutx.org/2015/02/05/a-solitary-failure/>.

⁸⁵ Governor Rick Perry in a letter to Attorney General Eric Holder, March 28, 2014, 3, <https://docs.google.com/file/d/0B6HJLeMEu3hIUctaWxnQWVUeDA/edit>.

⁸⁶ *Ibid.*, 1.

⁸⁷ E. DePrang, "Rick Perry Fails to Get Many Governors to Defy Prison Rape Law," *The Texas Observer*, May 30, 2014, <https://www.texasobserver.org/rick-perry-fails-get-many-governors-defy-prison-rape-law/>.

standards “wherever feasible.”⁸⁸ That same year, Texas policymakers tried and failed to raise the age of criminal responsibility to 18 years old, which would have eased PREA compliance efforts across the state.

Now, Texas correctional leaders face a difficult choice. They may choose to retrofit correctional facilities (primarily jails) so that 17-year-olds can be housed separately from adult inmates. Alternatively, leaders may refuse to pay the substantial costs associated with retrofitting their facilities, especially in jails where it may be nearly impossible to architecturally ensure sight and sound separation between youth and adult inmates; as a result, Texas would lose federal dollars currently dedicated to prison and jail management.

This loss in funding could be substantial. Between 2004 and 2013, Texas correctional facilities received more PREA-authorized grants than any other state.⁸⁹ In 2014 alone, Texas lost over \$800,000 in federal funds due to PREA noncompliance.⁹⁰ The Legislative Budget Board (LBB) estimated that the state could lose an additional \$2.78 million between 2016 and 2017, an amount that is far from inconsequential while falling oil and gas prices continue to strain the state’s budget.⁹¹

In addition to losing federal funding, Texas correctional officials who choose to ignore PREA standards may face another expensive threat – litigation from incarcerated and formerly incarcerated individuals. In 2014, a formerly incarcerated man in Travis County sued local jail officials for \$2 million in damages over a rape he survived while he

⁸⁸ Governor Greg Abbott in a letter to Attorney General Loretta Lynch, May 15, 2015, 1, http://www.lambdalegal.org/sites/default/files/star_tx_20150521_prea-letter.pdf.

⁸⁹ E. Henneke, *Fact Sheet 2015: HB 53, HB 330, and HB 1205* (2015): 4, <http://publicpolicycenter.texasojc.org/wp-content/uploads/2014/12/TCJC-Fact-Sheet-HB-53-HB-330-HB-1205-Age-of-Juvenile-Jurisdiction.pdf>.

⁹⁰ A. Mierjeski, “Why Is Texas Still Sending 17-Year-Olds to Adult Prisons,” *Vice*, July 30, 2015, <http://www.vice.com/read/why-is-texas-still-sending-17-year-olds-to-adult-prisons-730>.

⁹¹ Legislative Budget Board, *Trusted Programs Within the Office of the Governor: Summary of Recommendations* (2015): 12, http://www.lbb.state.tx.us/Documents/HAC_Summary_Recs/84R/Agency_300.pdf.

was incarcerated.⁹² The man's attorney stated that the county officials managing the facility "demonstrated a careless, wanton, conscious, and reckless disregard for the safety of the plaintiff" and argued that more could have been done to prevent the attack.⁹³ Similar lawsuits could follow if judges view PREA noncompliance as evidence of the government's deliberate indifference to inmate safety.

PSYCHOLOGICAL IMPACTS

Treating 17-year-olds as adults in the Texas criminal justice system not only places the teenagers in physical danger; the practice also jeopardizes their mental health. Research shows that teens tried in the adult justice system have similar psychiatric diagnoses to children adjudicated in the juvenile system when the two groups are first processed by court officials.⁹⁴ However, after only short periods of confinement, children under 18 in adult prisons experience drastically different psychological outcomes than their peers in juvenile detention centers.

For example, justice-involved youth are 36 times more likely to commit suicide in adult facilities than they are in juvenile facilities.⁹⁵ The risk of suicide is particularly high during a teen's first week of incarceration. Jolted by the initial shock of confinement, people who have not yet been convicted are seven times more likely to commit suicide

⁹² F. Mashhood, "Ex-Inmate Sues Over Travis County Jail Rape Claim," *The Austin American-Statesman*, March 14, 2014, <http://www.mystatesman.com/news/news/local-govt-politics/ex-inmate-sues-over-travis-county-jail-rape-claim/nfDC8/>.

⁹³ Ibid.

⁹⁴ J.J. Washburn, L.A. Teplin, L.S. Voss, C.D. Simon, K.M. Abram, and G.M. McClelland, "Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court," *Psychiatric Services* 59, no. 9 (2008): 968.

⁹⁵ N. Arya, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," *The Campaign for Youth Justice* (November 2007): 4, http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf.

than their convicted peers.⁹⁶ Smaller jail settings bear the highest suicide rates.⁹⁷ In these facilities, jail administrators lack the resources that they need to provide teens with sufficient mental health services and to house 17-year-olds separately from older inmates without the use of solitary confinement. As a result, these teenagers face heightened risks of assault, mental deterioration, and suicide.

High rates of mental illness and suicide among incarcerated 17-year-olds stem from traumatic experiences both inside and outside of adult correctional institutions. Before entering the justice system, these teenagers experience relatively high rates of mental illness, substance use disorders, and abuse.⁹⁸ Once incarcerated, they often develop fears of physical and sexual assault that can lead to depression, PTSD, anxiety, persistent distrust, and withdrawal.⁹⁹ Rather than breaking the cycle of criminality, incarcerating teenagers in adult facilities tends to exacerbate mental illness, increase recidivism, and ultimately reinforce the revolving door between freedom and confinement.¹⁰⁰

Confronted by high rates of youth victimization and suicide, Texas prison and jail administrators must make difficult choices regarding the treatment of vulnerable 17-year-olds. Limited resources and architectural barriers often force correctional leaders to place their small population of 17-year-olds in isolation. Colloquially termed “solitary confinement,” the use of isolation involves a troubling paradox: though secluded housing

⁹⁶ M. Chammah and T. Meagher, “Why Jails Have More Suicides than Prisons,” *The Marshall Project*, August 4, 2015, <https://www.themarshallproject.org/2015/08/04/why-jails-have-more-suicides-than-prisons#.uzUbsjb3m>.

⁹⁷ N. Arya, “Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America,” *The Campaign for Youth Justice* (November 2007): 10, http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf.

⁹⁸ *Ibid.*, 4-5.

⁹⁹ A. Wood, “Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller,” *Emory Law Journal* 61 (2012): 1451, http://law.emory.edu/elj/_documents/volumes/61/6/comments/wood.pdf.

¹⁰⁰ *Ibid.*, 1457.

protects youthful inmates from potential predators, the practice also causes severe psychological harms.

When an inmate is placed in solitary confinement, he or she is kept in a small cell without sensory stimulation, recreation, or outside socialization for up to 22 hours each day.¹⁰¹ At a developmental stage when teenagers require interaction, incarcerated 17-year-olds instead begin to lose their capacity to relate to others. Research shows that individuals under 18 are not psychologically capable of handling solitary confinement with the same resilience of an adult.¹⁰² As a result, a teen's long-lasting reactions to isolation may include but are not limited to:¹⁰³

- Visual and auditory hallucinations and delusions;
- Mood swings;
- Hypersensitivity to stimuli;
- Depression;
- Self-harm, suicidal ideation, and suicide attempts;
- Anxiety and paranoia;
- Loss of cognitive functioning;
- Nightmares and insomnia; and
- Uncontrollable rage or anger.

¹⁰¹ B. Butler, A.L. Fellow, and M. Simpson, "A Solitary Failure: The Waste, Cost, and Harm of Solitary Confinement in Texas," *ACLU of Texas* and *The Texas Civil Rights Project of Houston* (February 2015): 2, <http://www.aclutx.org/2015/02/05/a-solitary-failure/>.

¹⁰² I. Kysel, "Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons," *Human Rights Watch* and *The American Civil Liberties Union* (2012): 24, <https://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf>.

¹⁰³ *Ibid.*, 32.

Each of these symptoms can harm an individual's ability to build healthy relationships, develop important life skills, and reduce criminal behaviors later in life. Placement in solitary confinement can even prove fatal.

In 2010, 16-year-old Kalief Browder was arrested for a robbery that he insisted he did not commit.¹⁰⁴ Because he was in New York, he was automatically treated as an adult within the justice system. In total, Browder spent over 1,000 days in a Rikers Island jail awaiting a trial that would never occur.¹⁰⁵ For about two years of his incarceration, he was housed in solitary confinement, where he was starved, beaten, and denied access to adequate educational services and mental health treatment.¹⁰⁶ Over time, he grew paranoid and anxious as he waited for his trial and his next attack. He attempted suicide multiple times, only to be brought back to his solitary cell after he received crisis services.

After three years of incarceration, Browder's case was dismissed, and he was released into the busy streets of New York. Though he was back home with his family, Browder described that he felt "mentally scarred" – his flashbacks were frequent, he remained quiet and distant, and he felt constantly terrified.¹⁰⁷ "I feel like I was robbed of my happiness," Browder stated in 2014 months after his release.¹⁰⁸ Following multiple suicide attempts, Browder was in and out of a New York state hospital for psychiatric treatment, but there was no escape from his experience as a teenager in an adult jail. "In my mind right now, I feel like I'm still in jail," Browder described. "I'm still feeling the

¹⁰⁴ J. Gonnerman, "Before the Law," *The New Yorker*, October 6, 2014, <http://www.newyorker.com/magazine/2014/10/06/before-the-law>.

¹⁰⁵ *Ibid.*

¹⁰⁶ J. Gonnerman, "Kalief Browder, 1993-2015," *The New Yorker*, June 7, 2015, <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>.

¹⁰⁷ J. Gonnerman, "Before the Law," *The New Yorker*, October 6, 2014, <http://www.newyorker.com/magazine/2014/10/06/before-the-law>.

¹⁰⁸ *Ibid.*

side effects from what happened in there.”¹⁰⁹ In June 2015, he could no longer manage the impacts of adult incarceration and solitary confinement. Less than two weeks after his 22nd birthday, Browder tied a cord around his neck and jumped to his death in his mother’s home.¹¹⁰

DEVELOPMENTAL IMPACTS

Seventeen-year-olds face greater threats to body and mind in adult facilities than they would in juvenile detention centers. If they are able to endure these trying physical and psychological dangers, the teenagers’ healthy development is still hindered in three significant ways. First, despite the teens’ well-documented mental health and substance use treatment needs, Texas prisons and jails often fail to provide the services and programming that youth require to succeed. Second, while juvenile facilities provide regular school activities, many adult facilities lack the necessary resources to supply 17-year-olds with legally-mandated educational services. Third, the socialization opportunities available to teens in adult facilities tend to increase criminality, not reduce it.

Treatment Needs

After only a short period of time within the criminal justice system, youth in adult facilities develop greater treatment needs than their younger peers in juvenile facilities. In a 2009 study, researchers showed that 17-year-old Texans confined in adult prisons demonstrated higher levels of distress across almost every clinical category than similar

¹⁰⁹ M. Berman, “Kalief Browder and What We Do and Don’t Know About Solitary Confinement in the U.S.,” *The Washington Post*, January 26, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/01/25/kalief-browder-and-what-we-do-and-dont-know-about-solitary-confinement-in-the-u-s-2/>.

¹¹⁰ J. Gonneman, “Kalief Browder, 1993-2015,” *The New Yorker*, June 7, 2015, <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>.

youth detained in juvenile facilities.¹¹¹ Using the nationally-recognized Massachusetts Youth Screening Instrument (MAYSI-2), researchers discovered that about 90 percent of teens in the adult system had significant mental health treatment needs.¹¹² Other researchers have published similar findings. In 2011, psychologists demonstrated that the odds of experiencing clinical depression are 37 times higher for teens in adult prisons than for youth in juvenile settings.¹¹³ Despite these clear needs among delinquent youth, access to sufficient treatment depends largely upon the age at which a teenager commits his or her crime.

In Texas, if the adjudicated teen is 16 years old at arrest, he or she will be brought under the custody of the Texas Juvenile Justice Department (TJJD), where the staff's "fundamental philosophy" is to provide youth-centered, evidence-based treatment.¹¹⁴ In 2015, TJJD reported on five specific treatment programs:

1. Capital and serious violent offender treatment,
2. Sexual behavior treatment,
3. Alcohol and other drug treatment,
4. Mental health treatment, and
5. Gender-specific programming for females.

Together, these programs significantly reduced recidivism and enhanced positive youth development among participants.¹¹⁵ In light of these strong outcomes, TJJD increased service provision by 32 percent between 2009 and 2015 to ensure that more

¹¹¹ D.C. Murrie, C.E. Henderson, G.M. Vincent, J.L. Rockett, and C. Mundt, "Psychiatric Symptoms Among Juveniles Incarcerated in Adult Prison," *Psychiatric Services* 60, no. 8 (2009): 1094.

¹¹² *Ibid.*, 1094.

¹¹³ I.Y.H. Ng, X. Shen, H. Sim, R.C. Sarri, E. Stoffregen, and J.J. Shook, "Incarcerating Juveniles in Adult Prisons as a Factor in Depression," *Criminal Behaviour and Mental Health* 21 (2011): 27.

¹¹⁴ Texas Juvenile Justice Department, *The Annual Review of Treatment Effectiveness* (December 2015): 9, http://www.tjjd.texas.gov/Docs/TreatmentEffectivenessReview_2015.pdf.

¹¹⁵ *Ibid.*, 2.

juveniles in need received the treatments that they required.¹¹⁶ Table 2 below shows that the vast majority of children in need of programming both enrolled in and completed TJJD's data-driven treatments in 2014.

¹¹⁶ Ibid, 18.

Table 2. Specialized Programming at Secure TJJD Facilities in FY 2014

Program	Description	Percent of Juveniles in Need Who Enrolled in Treatment	Percent of Juveniles in Need Who Completed Treatment
Capital and Serious Violent Offender Treatment Program (CSVOTP)	<ul style="list-style-type: none"> Serves youth who are committed for murder, capital murder, and offenses involving the use of a weapon or deadly force. Uses group therapy and role play to help youth understand how their feelings relate to their violent behaviors. 	98%	91%
Sexual Behavior Treatment Program	<ul style="list-style-type: none"> Serves youth committed for sexual offenses. Uses individual counseling, support groups, and cognitive behavioral therapy to prevent relapse. 	98%	85%
Alcohol or Other Drug Use Treatment Programs (AODTP)	<ul style="list-style-type: none"> Serves youth with substance use issues and chemical dependencies. Uses evidence-based treatment curricula to connect a juvenile's criminal behavior to his or her personal history and use of drugs. 	99%	92%
Mental Health Treatment Program (MHTP)	<ul style="list-style-type: none"> Serves youth with mental health conditions. Treats the youth's mental illness in order to allow the juvenile to gain control over his or her behavior and reintegrate into the community. 	85%	55%

Source: Texas Juvenile Justice Department, *The Annual Review of Treatment Effectiveness* (December 2015). http://www.tjjd.texas.gov/Docs/TreatmentEffectivenessReview_2015.pdf.

In contrast, if a convicted teen is 17 years old at arrest, he or she will face drastically different treatment options. While TJJD prioritizes youth treatment, the Texas Department of Criminal Justice (TDCJ, the agency tasked with supervising incarcerated adults) prioritizes facility security. As a result, only about six percent of TDCJ's 2016 operating budget was allocated to providing convicted individuals with rehabilitative services and directing incarcerated persons with special needs toward treatment programs.¹¹⁷

Because the population of 17-year-olds in any given facility is small, providing separate treatment services for the teenagers is costly. Facility administrators may instead choose to withhold services from youthful inmates until they are 18 and can enroll in treatment programs with the general prison population. For example, while 92 percent of juveniles with a chemical dependency in TJJD facilities completed substance use treatment in 2014,¹¹⁸ 17-year-olds with similar needs were not even eligible to enroll in TDCJ's Substance Abuse Felony Treatment Program until they turned 18.

Educational Needs

Though 17-year-old Texans are viewed as adults within the justice system, the Texas Education Code still stipulates that teens of this age must receive educational services from local school districts.¹¹⁹ Youth incarcerated in adult facilities have high educational needs which are often unmet. For example, though nearly one-third of jail inmates under 24 years old have a learning disability, about 40 percent of jails surveyed by

¹¹⁷ Texas Department of Criminal Justice, *Operating Budget for Fiscal Year 2016 Submitted to the Governor's Office of Budget, Planning and Policy and the Legislative Budget Board* (December 2015): 2-4, http://tdcj.state.tx.us/documents/finance/Agency_Operating_Budget_FY2016_Governor.pdf.

¹¹⁸ Texas Juvenile Justice Department, *The Annual Review of Treatment Effectiveness* (December 2015): 19, http://www.tjjd.texas.gov/Docs/TreatmentEffectivenessReview_2015.pdf.

¹¹⁹ In Texas, individuals between ages five and 26 are entitled to educational services within the state's public school system. Incarcerated youth housed in *private* facilities are not considered residents of local school districts; thus, those school districts are not responsible for funding the incarcerated teenagers' education. See Texas Education Code, §25.001-0011 (1999), <http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.25.htm>.

the Bureau of Justice Statistics fail to provide detained individuals with any educational services at all.¹²⁰ Only 11 percent of jails provide special education services to accommodate the youth population's specific learning needs.¹²¹

As described previously, prison and jail facilities often lack the physical space to offer 17-year-olds separate treatment and educational services. In addition, jails usually do not employ enough personnel to deliver these services. While juvenile detention settings have one teacher for every 15 students, adult correctional settings have only one teacher for every 100 students, which limits an educator's ability to accommodate each individual's unique needs and strengths.¹²² This lack of educational opportunity not only increases the likelihood of a youthful inmate's future engagement in criminal activity;¹²³ the gap in services also presents a substantial liability concern for relevant stakeholders. For example, parents, juveniles, and youth advocates could pursue litigation against school district officials and facility administrators who fail to collaborate in providing incarcerated children with legally-mandated educational services.

Slightly younger youth served by TJJD have similar educational needs, but they face different outcomes. In 2015, TJJD youth were about 3.6 years behind the general youth population in reading skills.¹²⁴ To meet this need, TJJD staff and volunteers provided the juveniles with regular educational programming. Every day, TJJD youth attend classes

¹²⁰ N. Arya, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," *The Campaign for Youth Justice* (November 2007): 4, http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf.

¹²¹ *Ibid.*, 4.

¹²² A. Wood, "Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller," *Emory Law Journal* 61 (2012): 1454.

¹²³ S. Machin, O. Marie, and S. Vujic, "Youth Crime and Education Expansion," *German Economic Review* 13, no. 4 (2012): 366.

¹²⁴ Texas Juvenile Justice Department, *The Annual Review of Treatment Effectiveness* (December 2015): 7, http://www.tjjd.texas.gov/Docs/TreatmentEffectivenessReview_2015.pdf.

and/or vocational training that may be harnessed to secure employment upon release. Then, the children participate in skills-building exercises, behavioral groups, special treatment programs, and recreational activities. Each class and activity is designed to fill the youth's time productively and emphasize their capacity for positive change. In contrast, TDCJ's 17-year-olds are viewed first and foremost as inmates and are often denied services that could engage the teens in intellectual growth. While TJJD produces graduates, TDCJ produces greater delinquency.

Socialization Needs

Incarcerated 17-year-olds in Texas may not receive the formal education that they require in adult correctional facilities, but they are still learning. Unfortunately, positive role models do not facilitate the teenagers' education. Instead, youth in adult prisons and jails learn from their surrounding environment, where fear, power, and violence dictate daily living.

At 17 years old, teens are at a crucial turning point in their social development. Highly malleable, these teenagers seek to master interpersonal functioning by learning from their families, teachers, and peers.¹²⁵ Incarcerated 17-year-olds, however, are separated from their families, and they receive minimal interaction with teachers. Thus, their last vestige of social learning comes from their incarcerated peers.

At this stage of their psychosocial development, 17-year-olds increasingly seek acceptance from their peers, an achievement that activates the reward-seeking areas of the brain.¹²⁶ Teens also develop the ability to think abstractly, and they cultivate a deeper appreciation for experts. While serving time in TDCJ facilities, those "experts" are of the

¹²⁵ K.A. Carlson and M.M. Maïke, *Educating Juveniles in Adult Jails: A Program Guide* (December 2013): 13, <http://www.k12.wa.us/InstitutionalEd/pubdocs/EducatingJuvenilesInAdultJails.pdf>

¹²⁶ L. Steinberg, "A Social Neuroscience Perspective on Adolescent Risk-Taking," *Developmental Review* 28, no. 1 (2008): 84.

criminal variety. While their peers in juvenile settings build relationships with positive adult role models, 17-year-olds in Texas prisons instead learn social skills from TDCJ's inmate population.

At TJJD facilities, juveniles develop their social identities in a variety of settings. First, they meet with case managers equipped with youth-specific training. Then, the teens may interact with their peers in skills application groups where they can learn how their internal thoughts and emotions support their external behaviors. For example, in 2010, TJJD began to use the Positive Behavior Intervention and Supports (PBIS) framework to holistically enhance prosocial, adaptive behaviors among adjudicated youth in secure state facilities.¹²⁷ The PBIS strategy uses multidisciplinary teams to proactively strengthen children's positive behaviors and engage family supports in the rehabilitative process.

Seventeen-year-old Texans in adult prisons do not benefit from the same hands-on, family-centered socialization techniques. Instead, the parents of convicted 17-year-olds might not even be notified of their child's arrest and confinement behaviors. Further, TDCJ staff members are unlikely to have youth-specific expertise or training. Thus, the only mentors available to incarcerated 17-year-olds are individuals who also occupy Texas cellblocks. Here, power struggles and intimidation rule relationships, forcing 17-year-olds to learn habits that may harden them against society rather than shape them into productive members of communities.

In 1995, 16-year-old Glenn Martin of New York experienced the harsh socialization that defines adult incarceration on Rikers Island. In a speech delivered at the UT School of Social Work in April 2016, Martin described the immediate choice detained teenagers have to make: you can be a predator, or you can be prey. Martin decided to be a

¹²⁷ Texas Juvenile Justice Department, *The Annual Review of Treatment Effectiveness* (December 2014): 38, http://www.tjjd.texas.gov/Docs/TreatmentEffectivenessReview_2014.pdf.

predator, and, in return for his aggressive front, he was stabbed four times within his first week of confinement.

As impressionable teens in an adult facility, Martin and his peers not only learned how to become better criminals; they also “learned how to live without hope.”¹²⁸ His cellmate, however, gave Martin a glimpse of the humanity that these teenagers have to offer. During Martin’s first winter of incarceration, correctional officials opened the prison’s windows, exposing the inmates to extreme New York temperatures. Within hours, Martin developed a cold and sore throat. Martin’s new cellmate faced the same predator-or-prey choice that all inmates do when they meet a fellow detainee, but the young man chose a novel option: using an elaborate system of contraband items, the cellmate made Martin a cup of tea. Decades later, Martin described that his cellmate’s offering of tea illustrated the potential that incarcerated teenagers possess, as well as the lengths to which adult prisons will go to crush it.

ECONOMIC IMPACTS

Incarcerated 17-year-old Texans face dangerous physical, psychological, and developmental impacts that combine to inflict current harm. Upon reentry into the community, the harm of a prison sentence is not yet complete. Once they are released, the teens also carry adult criminal records that damage their future livelihoods. Incarcerating youthful inmates halts 17-year-olds’ cultivation of human and social capital at a critical moment in their burgeoning economic lives.¹²⁹ At the same time, these individuals

¹²⁸ G. Martin, “Smart Decarceration and Reentry: What Does Leadership Look Like” (presentation, University of Texas School of Social Work, Austin, TX, April 8, 2016).

¹²⁹ A. Aizer and J.J. Doyle, Jr. “Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges,” *National Bureau of Economic Research Working Paper No. 19102* (2013): 4, http://www.mit.edu/~jjdoyle/aizer_doyle_judges_06242013.pdf.

accumulate criminal capital and adult convictions that alter their lifelong career trajectories.

That change in trajectory can be substantial. Burdened with a criminal record, former felons experience difficulty in acquiring access to resources that could improve their economic stability, such as reliable housing, public benefits, student loans, and steady employment.¹³⁰ In a 2010 study, the Pew Charitable Trusts and Economic Mobility Project uncovered significant lifelong damages to individuals who had been formerly incarcerated on felony charges.¹³¹ Post-incarceration, the former inmates' hourly wages were reduced by 11 percent, their annual employment time was cut by nine weeks, and their annual earnings were 40 percent less than the earnings achieved by similar individuals who had never been incarcerated.¹³² By age 48, the typical former inmate lost about \$179,000 in income.¹³³ This value would likely be larger for 17-year-olds, as they are the youngest group in Texas to automatically face the state's adult justice system. Their criminal records are thus tainted before the teens even start their careers, and those records may follow them for the duration of their working lives.

Drastically different economic outcomes occur among teenagers with similar backgrounds and criminal histories who are placed either in the juvenile or adult justice system. In 2005, Jason Wang and two of his close friends robbed a family at gunpoint in

¹³⁰ For a comprehensive list of the collateral consequences that formerly incarcerated people face once they are released into their communities, see National Institute of Justice and American Bar Association, *National Inventory of the Collateral Consequences of Conviction*, accessed May 4, 2016, <http://www.abacollateralconsequences.org/description/>.

¹³¹ The Pew Charitable Trusts and the Economic Mobility Project, *Collateral Costs: Incarceration's Effect on Economic Mobility* (2010): 3, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf.

¹³² *Ibid.*, 4.

¹³³ *Ibid.*, 4.

Mesquite, Texas.¹³⁴ The trio was arrested, and their fates were brought into the hands of the Texas justice system. Wang was 15 at the time of the offense. As a result, he was adjudicated in the juvenile system, where he received programming, support, and the eventual sealing of his record. One of his friends was not so fortunate; he was 17 at the time of the offense and was taken into TDCJ custody where he received far fewer self-improvement opportunities. In 2015, Wang had an MBA and owned two businesses. His friend, though similar in socioeconomic and delinquent background, was struggling to find work because of his adult criminal record.¹³⁵

Criminal records and depressed earnings do not only impact single individuals, like Wang's partner in crime. Rather, they create a troubling cycle across generations. Trapped by a parent's criminal conviction, poverty, and recidivism, the children of current and formerly incarcerated individuals are more likely than their peers to experience numerous negative outcomes, including:^{136 137}

- Physical and behavioral health problems;
- Developmental delays;
- Foster care placement;
- Difficulty in school;
- Unemployment;
- Violent and/or delinquent behavior; and

¹³⁴ A. Mierjeski, "Why Is Texas Still Sending 17-Year-Olds to Adult Prisons," *Vice*, July 20, 2015, <http://www.vice.com/read/why-is-texas-still-sending-17-year-olds-to-adult-prisons-730>.

¹³⁵ *Ibid.*

¹³⁶ L. Feig, "Breaking the Cycle: A Family-Focused Approach to Criminal Sentencing in Illinois," *University of Chicago Advocates' Forum* (2015): 14, http://ssa.uchicago.edu/sites/default/files/uploads/AdvocatesForum_2015_Final.pdf.

¹³⁷ Annie E. Casey Foundation, *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities* (April 2016): 3, <http://www.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>.

- Their own incarceration, starting the sequence all over again.

In contrast, youth served in the juvenile justice system may have their records expunged or sealed, breaking the generational cycle of economic decline and criminality before it begins.

Adverse economic outcomes also impact a formerly incarcerated person's broader community. While higher accumulations of human capital (such as wages, marketable skills, and years of education) increase the opportunity cost of criminal activity, lower levels of human capital decrease that opportunity cost;¹³⁸ crime thus becomes more economically attractive to those with criminal records who have few legal opportunities to achieve financial stability within their communities. As a result, these individuals may become more likely to reoffend, which, in turn, increases community costs of policing, victimization, and incarceration.

Vocational programming in adult prisons can help to prevent such harmful economic consequences. For every \$1 spent on these skill-based programs, communities experience almost \$13 in net benefits.¹³⁹ However, 17-year-olds often lack access to these programs until they are old enough to join the general inmate population. Unfortunately, in even a short period of time, the teens can experience mental deterioration and declines in healthy development that combine to decrease program effectiveness.

EVALUATION OF EVIDENCE

The evidence discussed in this chapter demonstrates the detrimental effects of automatically funneling 17-year-olds into the adult criminal justice system. Still, current research suffers from three major drawbacks.

¹³⁸ L. Lochner, "Education, Work, and Crime: A Human Capital Approach," *International Economic Review* 45, no. 3 (2004): 812.

¹³⁹ *Ibid.*, 23.

First, statistics describing the treatment of 17-year-olds are likely underestimated. The underreporting problem is particularly significant for data concerning sexual violence against incarcerated 17-year-olds. For one assault to make it into the data, several crucial but challenging steps must be taken.¹⁴⁰ First and foremost, the teenager must survive the sexual assault. Then, despite the trauma of the attack, the youth must preserve the necessary physical evidence to prove that the incident did, in fact, occur. Finally, the 17-year-old must navigate the stigma, fears of retribution, and placement in protective isolation that often accompany an accusation of sexual violence. Together, these obstacles lead to the underreporting and underestimation of rape and sexual abuse in Texas prisons and jails.

Second, aggregate statistics about the treatment of 17-year-olds in adult prisons may paint a false picture of what occurs within individual facilities. Some correctional administrators are more effective than others at balancing facility security needs with the humane treatment of incarcerated persons. For example, many reform advocates laud Jail Administrator Wayne Dicky for his management of Brazos County's local jail.¹⁴¹ Dicky and his staff use the Inmate Behavior Management (IBM) system developed by the National Institute of Corrections to better assess inmate needs, improve behavioral outcomes, and optimize operational efficiency.¹⁴² The system emphasizes direct supervision techniques¹⁴³ to increase positive staff engagement with incarcerated persons.

¹⁴⁰ A.L. Young and K. Matlack, "Raped by the Deputy: A Texas Case, a U.S. Problem," *The Establishment*, February 12, 2016, <http://www.theestablishment.co/2016/02/17/raped-by-the-deputy-a-texas-case-a-u-s-problem/>.

¹⁴¹ C. Graziani, "Criminal Justice and Mental Health Coalition Visits Brazos County Detention Center," *Grassroots Leadership*, November 2015, <http://grassrootsleadership.org/blog/2015/11/criminal-justice-and-mental-health-coalition-visits-brazos-county-detention-center>.

¹⁴² National Institute of Corrections, *Inmate Behavior Management: Brazos County Jail Case Study* (December 2013), <https://s3.amazonaws.com/static.nicic.gov/Library/027703.pdf>.

¹⁴³ Traditional approaches to supervision entail the use of "hard barriers" between correctional officials and inmates in order to maintain control within a prison or jail facility. In the late 20th century, correctional administrators began to apply direct supervision models to their facilities as a proactive form of inmate management. Direct supervision involves small living units and direct contact between correctional officers and inmates. Studies of direct supervision show that the approach consistently reduces violence within

As a result, Dicky reported that 94 percent of incarcerated individuals at any given time did not require disciplinary action in 2015.¹⁴⁴ The facility is also PREA compliant and reports fewer inmate-on-staff and inmate-on-inmate assaults than facilities of a similar size.¹⁴⁵ However, even as 17-year-olds in the Brazos County Detention Center benefit from the IBM system's tenets, the teenagers still do not receive the entire breadth of the educational services that they require.

In general, statewide statistics bury the nuance of each individual's experience of confinement across Texas. Brazos County struggles with different problems than other Texas jail systems. Therefore, 17-year-olds in one facility are met by different impacts than similar teenagers detained elsewhere in the state.

The third drawback is not a critique of the evidence itself but rather an analysis of many readers' reactions to it. Criminal justice researchers have uncovered brutal conditions of confinement that have even led to inmate deaths. Unfortunately, public perceptions of those who commit crimes often prevent the success of reform efforts to improve correctional living conditions. In line with the "tough on crime" mentality, community members may not view the harmful impacts of adult confinement on Texas teens as a reason to raise the age of criminal responsibility. Rather, some members of the public believe that a prison sentence serves *to punish* its inhabitants, not *as punishment* in and of itself.¹⁴⁶ As a result, the beatings, rape, and psychological trauma that incarcerated people experience are viewed as part and parcel of their sentence rather than as a gross violation

correctional facilities, lowers system costs, and improves staff morale. For more on direct supervision, see R. Wener, "Effectiveness of the Direct Supervision System of Correctional Design and Management: A Review of the Literature," *Criminal Justice and Behavior* 33, no. 3 (2006): 392-410.

¹⁴⁴ C. Graziani, "Criminal Justice and Mental Health Coalition Visits Brazos County Detention Center," *Grassroots Leadership*, November 2015, <http://grassrootsleadership.org/blog/2015/11/criminal-justice-and-mental-health-coalition-visits-brazos-county-detention-center>.

¹⁴⁵ Brazos County Detention Center administrator in discussion with author, January 2016.

¹⁴⁶ A. Reynolds, "We Need to Stop Joking About Prison Rape," *The Huffington Post*, July 24, 2015, http://www.huffingtonpost.com/alexander-reynolds/prison-rape_b_7844642.html.

of human rights.¹⁴⁷ Thus, merely uncovering the harmful physical, psychological, developmental, and economic impacts of incarceration may not garner the political will that is needed to change the plight of incarcerated 17-year-olds in Texas.

¹⁴⁷ Ibid.

Chapter 4:

Evidence-Based Benefits of Raising the Age

The previous chapter explained the harmful impacts of treating 17-year-olds as adults when they commit crimes in Texas. Chapter 4 will address a new question: given the detriments of the state's current age policy, what evidence-based benefits could Texans achieve by raising the age of criminal responsibility to 18 years old?

Researchers noted three levels of benefits that accrue to individuals, communities, and state and county coffers when other states raised their ages of criminal responsibility. These benefits (described in greater detail below) include:

- **Micro-level benefits**, such as improved neurological and psychosocial development for individual youth;
- **Mezzo-level benefits**, such as better public safety outcomes for local communities; and
- **Macro-level benefits**, such as net economic benefits for state and county taxpayers.

MICRO LEVEL: IMPROVED NEUROLOGICAL AND PSYCHOSOCIAL DEVELOPMENT

Recent developments in neurobiology definitively show researchers what parents have known for years – adolescents are different from adults. Advances in functional imaging technology allow scientists to demonstrate those differences more clearly to the public. Researchers have repeatedly found that young people up to age 25 are both anatomically and psychologically underdeveloped.¹⁴⁸ Despite this evidence, 17-year-old Texans do not receive special protections from the state when they break the law. Once

¹⁴⁸ J. Pujol, P. Vendrell, C. Junqué, J.L. Martí-Vilalta, and A. Capdevila, “When Does Human Brain Development End: Evidence of Corpus Callosum Growth Up To Adulthood,” *Annals of Neurology* 34, no. 1 (1993): 71.

they have committed a crime, these teenagers face the adult justice system, even though they are still saddled by rudimentary cognitive functioning and immature social skills.

Brain development research shows that key neurological functions are not yet developed by age 17. For example, the average brain's prefrontal cortex, which controls executive functioning, does not fully develop until the age of 25.¹⁴⁹ The prefrontal cortex is responsible for advanced cognitive processes, such as complex decision-making, response inhibition, impulse control, emotional regulation, and the ability to reason. Before the prefrontal cortex fully matures, teenagers remain unable to think abstractly about their decisions, anticipate consequences, and plan for contingencies. Instead, they must rely on gut reactions rather than analytical processes, which hinders their ability to inhibit delinquent behaviors.¹⁵⁰ The development process can be delayed even further for youth who struggle with neurologically-damaging histories of trauma, such as the abuse and violence many justice-involved youth encounter as young children.¹⁵¹

Teenagers' psychosocial growth occurs alongside their cognitive development. Burgeoning neurological functions combine with social inexperience to make 17-year-olds inefficient information processors and poor risk assessors.¹⁵² As a result, teens often emphasize the benefits of an action over its risks and choose consumption over self-management.¹⁵³ Teenagers' hormonal development, social environments, and immature

¹⁴⁹ T. Cox, "Brain Maturity Extends Well Beyond Teen Years," *National Public Radio*, October 10, 2011, <http://www.npr.org/templates/story/story.php?storyId=141164708>.

¹⁵⁰ National Conference of State Legislatures, *Adolescent Development & Competency: Juvenile Justice Guide Book for Legislators*, accessed March 2016, 6, <http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf>.

¹⁵¹ Child Welfare Information Gateway, *Supporting Brain Development in Traumatized Children and Youth* (2011): 2, <https://www.childwelfare.gov/pubPDFs/braindevtrauma.pdf>.

¹⁵² *Ibid.*, 5.

¹⁵³ J.T. Ulmer and D. Steffensmeier, "The Age and Crime Relationship: Social Variation, Social Explanations," in *The Nurture Versus Biosocial Debate in Criminology: On the Origins of Criminal Behavior and Criminality*, ed. by K.M. Beaver, J.C. Barnes, and B.B. Boutwell (Thousand Oaks, CA: SAGE Publications, 2015), 383.

cognitive abilities also predispose them to succumb to peer pressure.¹⁵⁴ Unburdened by an orientation toward the future, young people are thus more likely to commit crimes with like-minded teens than to shirk their peers' acceptance.

Neurological and psychosocial findings argue that age impacts behavior, including criminal behavior. These findings lead to three significant conclusions regarding the age of criminal responsibility in Texas:

1. Teens are less blameworthy for their criminal behavior.
2. Teens are more capable of rehabilitation.
3. Teens will likely age out of delinquency.

First, research suggests that 17-year-olds are less culpable for their delinquent behavior than older adults are. Teens' vulnerability to peer pressure and lack of decision-making prowess hinder their ability to understand the consequences of their behaviors and restrain themselves from participating in delinquent activities. Thus, their criminal behavior is not the result of "abject moral poverty," as John DiIulio asserted in the 1990s;¹⁵⁵ rather, their behavior is a side effect of incomplete personality and brain development.

In at least three recent cases, the U.S. Supreme Court ruled that age should be a mitigating factor in determining criminal culpability and therefore must be taken into account when determining a youth's punishment.¹⁵⁶ Further, the MacArthur Research

¹⁵⁴ National Conference of State Legislatures, *Adolescent Development & Competency: Juvenile Justice Guide Book for Legislators*, accessed March 2016, 8, <http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf>.

¹⁵⁵ J.J. DiIulio, "The Coming of the Super-Predators," *The Weekly Standard*, November 27, 1995, <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

¹⁵⁶ These cases include: *Roper v. Simmons* (2005) in which capital punishment for a juvenile was declared unconstitutional, *Graham v. Florida* (2010) in which life imprisonment without the chance of parole for a juvenile was declared unconstitutional, and *Miller v. Alabama* (2012) in which mandatory life sentences without the chance of parole for juveniles in homicide cases was declared unconstitutional. In each case, justices cited the juveniles' developmental immaturity and diminished culpability to justify the majority decision.

Network demonstrated that teenagers' developmental immaturity could threaten their competency to stand trial. MacArthur researchers found that young people tended to misunderstand their Miranda rights, and youth were more susceptible than adult defendants to external coercion from authority figures in the justice system.¹⁵⁷

Second, while 17-year-olds are less culpable for their criminal actions, they are also more responsive to rehabilitation. At age 17, a teenager's character has not yet fully formed. The juvenile justice system can more positively influence a youth's character development by utilizing therapeutic dispositions. This approach can both hold the individual accountable and take full advantage of the teen's short-lived neurological malleability to improve their future behavioral outcomes.¹⁵⁸

Finally, teenagers are likely to age out of criminal activity, which tends to peak in late adolescence.¹⁵⁹ Thus, delinquent behavior at 17 does not necessarily predict future criminality. As 17-year-olds transition into adulthood, the juvenile justice system presents an opportunity to provide the teenagers with developmentally-appropriate rehabilitation that can advance healthy adolescent development. However, if teens are placed in the adult system, they will experience their formative years of development within prison facilities dominated by power struggles and violence. Inside adult institutions, a teen's malleability will be used for less productive means, and negative role models may diminish each teenager's potential to age out of a criminal lifestyle.

¹⁵⁷ National Conference of State Legislatures, *Adolescent Development & Competency: Juvenile Justice Guide Book for Legislators*, accessed March 2016, 7, <http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf>.

¹⁵⁸ M. Friedman, and P. Pierce, "Raise the Age of Criminal Responsibility in New York State," *The Huffington Post*, June 6, 2014, http://www.huffingtonpost.com/michael-friedman-lmsw/raise-the-age-of-criminal_b_5439494.html.

¹⁵⁹ M. Massoglia and C. Uggen, "Settling Down and Aging Out: Toward an Interactionist Theory of Desistance and the Transition to Adulthood," *American Journal of Sociology* 116, no. 2 (2010): 544, https://www.soc.umn.edu/~uggen/Massoglia_Uggen_AJS_10.pdf.

MEZZO LEVEL: BETTER PUBLIC SAFETY OUTCOMES

Inside adult prisons, teenagers are physically and psychologically harmed by cultures of brutality. Such abuse is detrimental to individual teens, but this reality also creates more wide-reaching consequences. The impacts of prison violence do not stop at each prison's gate. Instead, these impacts can eventually spread to Texas communities once teenagers are released from their cells and taken back to their hometowns.

For example, widespread sexual abuse in prisons and jails places 17-year-olds at greater risk for contracting sexually transmitted diseases. Rates of HIV/AIDS are five times higher inside prisons than they are in outside communities, and these rates are even greater for incarcerated African Americans.¹⁶⁰ Once released, formerly incarcerated individuals bring these diseases (and their associated treatment costs) back to their home neighborhoods.

More prevalent than HIV infections, however, is the risk that high recidivism can pose to public safety. When formerly incarcerated teens return home, they carry the traumas of adult prisons with them. Instead of being welcomed home with support, they are often met by intractable barriers and stigma that make rejoining the community challenging. As their reintegration efforts flounder, their recidivism rates grow, and new victims are left in their wake.

Recidivism rates for 17-year-olds vary drastically depending upon the state (and thus the prevailing age of criminal responsibility) where teenagers commit their crimes. Between 1993 to 1999, the MacArthur Research Network tracked two groups of justice-involved youth returning to their communities.¹⁶¹ Both groups had similar criminal

¹⁶⁰ Centers for Disease Control and Prevention, *HIV Among Incarcerated Populations* (July 2015), <http://www.cdc.gov/hiv/group/correctional.html>.

¹⁶¹ MacArthur Research Foundation, *Issue Brief 5: The Changing Borders of Juvenile Justice: Transfer to Adolescents to the Adult Criminal Court* (September 2006): 1, <https://www.macfound.org/media/files/ADJJTRANSFER.PDF>.

histories, economic backgrounds, and other recidivism risk factors. The key difference between the teenagers was their community of origin: one group of 17-year-olds lived in New Jersey and faced the state's juvenile justice system, while the other group lived in New York and faced the state's adult justice system.

MacArthur researchers found a striking difference in re-arrest rates between the two groups. Despite social and economic similarities with their New Jersey peers, the New York teens were 85 percent more likely to be re-arrested for a violent crime and 44 percent more likely to be re-arrested for a property crime upon release.¹⁶² The New York teenagers also had a 26 percent greater chance of being re-incarcerated than the New Jersey teens, starting the cycle of imprisonment, release, and recidivism all over again.¹⁶³ In contrast, teens served in New Jersey's juvenile courts and those who were diverted from the justice system altogether were far less likely to commit new crimes, particularly violent ones.¹⁶⁴ More recent research affirmed the MacArthur Research Network's original findings. In 2007, the Centers for Disease Control and Prevention (CDC) reported that youth who served time in adult prisons experienced 34 percent more felony re-arrests than similar youth who were detained in juvenile facilities.¹⁶⁵

Crime researchers argue that two cultural and structural differences between the adult and juvenile justice systems make teens in adult prisons more likely to reoffend than their peers in juvenile detention centers.¹⁶⁶ First, adult facilities are consumed by cultures

¹⁶² Ibid, 1-2.

¹⁶³ Ibid, 2.

¹⁶⁴ Ibid, 2.

¹⁶⁵ R. Hahn et al., "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," *Center for Disease Control and Prevention Task Force on Community Preventive Services* (November 2007).

<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

¹⁶⁶ National Conference of State Legislatures, *Adolescent Development & Competency: Juvenile Justice Guide Book for Legislators*, accessed March 2016, 11-12, <http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf>.

that emphasize punishment and violence over rehabilitation and recovery. As described in Chapter 3, incarcerated 17-year-olds are at increased risk of physical and sexual assault, and they are often denied adequate mental health treatments. The impressionable teenagers must then endure within a prison culture where antisocial, violent behavior is modeled and even rewarded. Within these so-called “crime schools,” 17-year-olds then learn to reenact behaviors that jeopardize public safety.¹⁶⁷

Second, the adult system’s staffing structure is not conducive to a 17-year-old’s unique needs. Prison staff members may not receive training on how interactions with teenage inmates should differ from interactions with adult inmates. The lack of adequate resources and training procedures preclude guards, wardens, and administrators from adjusting prison practices to align with the science of adolescent development.¹⁶⁸ Higher inmate-to-staff ratios and fewer productive and routine activities block teenagers’ ability to partake in effective rehabilitative programming that can reduce future criminal activity.

The key to combating teenage recidivism and re-incarceration is to match the right individuals with the right treatment opportunities.¹⁶⁹ When the justice system does this effectively, the community experiences positive impacts, such as fewer violent crimes, reduced future victimization, and improved public safety.¹⁷⁰ In Texas, the juvenile system offers the tools needed to successfully pair 17-year-olds with the rehabilitative

¹⁶⁷ M. Schladen, “Question of Raising Criminal Age in Texas Fraught with Complexity,” *Juvenile Justice Information Exchange*, April 1, 2014, <http://jjie.org/question-of-raising-criminal-age-in-texas-fraught-with-complexity/106620/>.

¹⁶⁸ National Conference of State Legislatures, *Adolescent Development & Competency: Juvenile Justice Guide Book for Legislators*, accessed March 2016, 12, <http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf>.

¹⁶⁹ P. Michels, “Reformers Take a Victory Lap,” *The Texas Observer*, January 29, 2015, <http://www.texasobserver.org/texas-juvenile-justice-reformers-take-victory-lap/>.

¹⁷⁰ Texas House of Representatives, House Committee on Criminal Jurisprudence, *Interim Report to the 84th Legislature* (January 2015): 5, http://www.house.state.tx.us/_media/pdf/committees/reports/83interim/House-Committee-on-Criminal-Jurisprudence-interim-report.pdf.

opportunities that they require, including drug treatment, educational programming, and counseling services. Further, in 2015, the 84th Texas Legislature took steps to keep adjudicated children closer to home when they come in contact with the justice system, which further reduces recidivism rates.¹⁷¹ If 17-year-olds are treated as juveniles in the justice system, these teens will be given the same opportunity to strengthen ties to their communities, increase family involvement in their progress, and ease the reentry process when their sentences are completed. As a result, current recidivism rates for Texas 17-year-olds can be slashed, and community safety can improve.

MACRO LEVEL: NET ECONOMIC BENEFITS

Chapter 3 described the economic consequences of treating 17-year-olds as adults in the criminal justice system. Faced with challenges in obtaining employment, public benefits, and social supports, each youth incarcerated in adult facilities is estimated to lose about \$179,000 in earnings over a lifetime.¹⁷² This negative impact, however, could be altered by raising the age of criminal responsibility in Texas. Research shows that handling 17-year-olds within the juvenile justice system will create economic costs, but those costs will be far outweighed by economic benefits that accrue to taxpayers, future victims, and rehabilitated youth.

Cost Estimates

In 2015, the 84th Texas Legislature considered HB 53, HB 330, and HB 1205, all of which proposed raising the age of criminal responsibility to 18 years old. However,

¹⁷¹ M. Ward, "Texas Continues to Move Youths to Community Programs," *The Houston Chronicle*, December 6, 2015, <http://www.chron.com/news/politics/texas/article/Texas-continues-to-move-youths-to-community-6680332.php>.

¹⁷² The Pew Charitable Trusts and the Economic Mobility Project, *Collateral Costs: Incarceration's Effect on Economic Mobility* (2010): 4, http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf.

opponents feared that the upfront costs of such a change would overwhelm state and county budgets. The Legislative Budget Board (LBB) estimated that raising the age would cost about \$76 million in the first biennium after the new law was passed.¹⁷³ The LBB's estimate used projected sentencing trends and current justice system costs to determine the financial impact of each proposed bill. Though the LBB assumed that many 17-year-olds would be diverted away from juvenile detention, the overall cost of the change remained high because serving youth at any level of the juvenile system is substantially more expensive than serving individuals in the adult system. Whether juveniles are detained in a facility, released on parole, or sentenced to community supervision, they are entitled to costly programming and educational services that adults do not mandatorily receive.¹⁷⁴ Table 3 lists the differences in imprisonment, parole, and probation costs in Texas' two justice systems.

Table 3. Costs Per Day for Texas' Adult and Juvenile Justice Systems

	Adult System	Juvenile System
Adult Incarceration or Juvenile Detention	\$54.89	\$437.11
Parole Supervision	\$4.04	\$31.93
Community or Probation Supervision	\$1.63	\$5.40

Source: U. Parks, *Fiscal Note, 84th Legislative Regular Session in Re: HB 1205 by Dutton* [Memorandum] Austin, TX: Legislative Budget Board, April 1, 2015, 2, <http://www.capitol.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB01205I.pdf#navpanes=0>.

¹⁷³ U. Parks, *Fiscal Note, 84th Legislative Regular Session in Re: HB 1205 by Dutton* [Memorandum] Austin, TX: Legislative Budget Board, April 1, 2015, 1, <http://www.capitol.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB01205I.pdf#navpanes=0>.

¹⁷⁴ M. Chammah, "Texas Among States Facing 'Raise the Age' Debate," *The Texas Tribune*, March 4, 2015, <https://www.texastribune.org/2015/03/04/texas-among-states-facing-raise-age-debate/>.

In addition to expenses associated with shifting 17-year-olds to more expensive juvenile caseloads, costs of raising the age of criminal responsibility in Texas could include (but are not limited to):¹⁷⁵

- Greater arrest expenditures, as juvenile arrests can cost about 50 percent¹⁷⁶ more than adult arrests;
- Increased juvenile court costs, including hiring, training, and case processing expenses;
- Resources to hire more juvenile probation officers;
- Training costs for adult probation and parole officers who transfer from the adult system to the juvenile system;
- Capital investments to add beds to state and county juvenile facilities; and
- Costs to develop and implement new programming and treatment options relevant to older juveniles, such as job readiness training and independent living courses.

Benefit Estimates

Dialogue about costs, however, fails to recognize the economic benefits that could accrue if legislators choose to raise the age of criminal responsibility in Texas. In 2010, the Texas Blue Ribbon Task Force on Transforming Juvenile Justice estimated that taxpayers could save between \$1.7 and \$2.3 million for each rehabilitated youth who is turned away from a criminal lifestyle.¹⁷⁷ As discussed previously, the juvenile justice system is better

¹⁷⁵ M. Deitch, R. Breeden, and R. Weingarten, “Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas,” *American Journal of Criminal Law* 40, no. 1 (2012): 43-47, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

¹⁷⁶ C. Henrichson and V. Levshin, “Cost-Benefit Analysis of Raising the Age of Juvenile Jurisdiction in North Carolina,” *Vera Institute of Justice* (2011): 12, <http://www.vera.org/files/cost-benefit-analysis-of-raising-the-age-of-juvenile-jurisdiction-in-north-carolina.pdf>.

¹⁷⁷ D. Springer, *Transforming Juvenile Justice in Texas: A Framework for Action, Blue Ribbon Task Force Report* (September 2007): 5, <http://www.campaignforyouthjustice.org/documents/JuvenileJusticeTaskForceReport-September2007-FINAL.pdf>.

equipped to change 17-year-olds' behaviors and lead them down a path toward productive community involvement.

In a 2012 study, public policy researchers Michele Deitch, Rebecca Breeden, and Ross Weingarten sought to determine the net financial impact of diverting 17-year-olds to the juvenile justice system in Texas. Rather than exclusively calculating costs, the analysts also estimated the cost savings and future benefits that Texas taxpayers, avoided victims, and rehabilitated youth could experience if legislators raised the age of criminal responsibility. Cost savings and future benefits targeted in the study included:¹⁷⁸

- A decrease in the adult prison, state jail, and community supervision populations;
- Avoided capital investments in county and state facilities in order to comply with PREA's Youthful Inmate Standard;
- A reduction in future recidivism costs, including decreases in re-arrests and re-incarceration expenses;
- Reduced victimization costs caused by declines in both reported and unreported future crimes; and
- Enhanced earning opportunities for individuals who commit crimes at age 17 and have their records sealed.

Deitch, Breeden, and Weingarten estimated that total taxpayer costs would amount to about \$159 million if Texas changed its criminal age policy.¹⁷⁹ However, taxpayer, victim, and youth benefits together amounted to almost \$250 million, a figure which still does not include several important benefits, such as the savings that could be achieved by removing convicted teens from adult parole caseloads, reducing lifetime recidivism rates,

¹⁷⁸ M. Deitch, R. Breeden, and R. Weingarten, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *American Journal of Criminal Law* 40, no. 1 (2012): 47-55, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

¹⁷⁹ *Ibid.*, 56.

and decreasing the teens' future reliance on social services.¹⁸⁰ In total, the analysts estimated that raising the age of criminal responsibility in Texas would generate nearly \$90 million in net economic benefits for *each* cohort of 17-year-olds moved to the juvenile justice system.¹⁸¹ If calculated again in 2016, net economic benefits would likely be even greater than they were in 2012 due to dropping arrest rates for 17-year-olds across Texas.

Many researchers have noted the micro-level developmental advantages and mezzo-level community safety improvements that a raise the age initiative could cultivate. However, most advocates have also acknowledged that such benefits can only be achieved at great financial cost to local counties. For example, in 2015, Harris County officials asserted that raising the age would cost them \$50 million in juvenile facility updates in the first year of implementation alone.¹⁸² Recent research changes the tone and direction of this policy conversation. Most costs of raising the age would fall on individual counties, but Deitch, Breeden, and Weingarten's study shows that most benefits would accrue to the *same* county-level stakeholders. For example, raising the age in Dallas County may require county commissioners to allocate funds to hire new juvenile probation officers. However, Dallas County officials would also avoid spending \$4 million per year on housing incarcerated 17-year-olds separately from adult inmates.¹⁸³ By outlining both the policy's costs and benefits, state legislators and county leaders may finally see that raising the age is a change that Texas can no longer afford to defer.

¹⁸⁰ Ibid, 48, 56, & 57.

¹⁸¹ Ibid, 56.

¹⁸² U. Parks, *Fiscal Note, 84th Legislative Regular Session in Re: HB 1205 by Dutton* [Memorandum] Austin, TX: Legislative Budget Board, April 1, 2015, 3, <http://www.capitol.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB01205I.pdf#navpanes=0>

¹⁸³ E. Henneke, "Raise the Age Leads to PREA Compliance in Texas," *The Campaign for Youth Justice*, May 14, 2015, <http://www.campaignforyouthjustice.org/news/blog/item/raise-the-age-leads-to-prea-compliance-in-texas>.

EVALUATION OF EVIDENCE

Evidence discussed in Chapter 4 shows that individuals, communities, and state institutions could collectively benefit from a raise the age initiative. To evaluate those benefits, researchers often rely on cost-benefit analyses that clearly define and monetize the impact of a policy change. However, two practical and ethical challenges arise when cost-benefit analyses are used to assess the net result of raising the age of criminal responsibility.

First, practical problems occur when researchers undertake a cost-benefit analysis of the raise the age initiative in Texas. Raising the age of criminal responsibility creates clear-cut costs, such as the need to hire more juvenile judges, probation officers, and service providers who can meet increased demand within the juvenile justice system. Those costs are simple to understand, calculate, and publicize. The benefit side of the equation, however, is more challenging to translate into a dollar value. Improved brain development and reduced lifetime recidivism rates for affected teens have far-reaching impacts that are difficult to condense into one benefit calculation.

Throughout the study, Deitch, Breeden, and Weingarten made extremely conservative assumptions that overestimated the policy change's costs and underestimated its benefits.¹⁸⁴ This ultimately left readers with an underestimation of *net* economic benefits associated with raising the age of criminal responsibility to 18 in Texas. Behavioral economists, however, have shown that the dollar values placed on costs and benefits may not be directly comparable, which hinders analysts' ability to determine the true net impact

¹⁸⁴ For example, Deitch, Breeden, and Weingarten assumed that moving 17-year-olds to the juvenile justice system would decrease future recidivism rates by 10 percent, even though the Centers for Disease Control and Prevention found that this reduction could be as high as 34 percent. See M. Deitch, R. Breeden, and R. Weingarten, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *American Journal of Criminal Law* 40, no. 1 (2012): 59, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

of any policy change. People tend to be more psychologically sensitive to losses than to gains, even when those changes are of the same magnitude.¹⁸⁵ Thus, the benefits of raising the age of criminal responsibility may not directly offset costs of the same dollar value, despite what proponents of cost-benefit analyses suggest.

This problem is compounded further by the fact that benefits and costs associated with particular stakeholders may carry more weight than their dollar values suggest. For example, though Deitch, Breeden, and Weingarten's analysis includes benefits to taxpayers, victims, *and* rehabilitated 17-year-olds, legislators tend to prioritize only those benefits that accrue to taxpayers. As a result, policymakers may not consider the entire breadth of benefits that could result from raising the state's age of criminal responsibility to 18 years old.

Cost-benefit analyses also present inmates' rights advocates with an ethical dilemma. The tool prioritizes the health of state budgets over the well-being of 17-year-old Texans. In theory, cost-benefit analyses suggest that policy changes should be pursued when their financial benefits outweigh costs.¹⁸⁶ To make this determination, considerations for both sides of an issue must be defined in a common scale: dollars and cents. Money then lies at the center of any policy choice. Physical, psychological, and developmental outcomes for Texas teenagers are not traded on any economic markets. Their lives do not easily translate into a dollar value, and to do so fails to capture their inherent worth as human beings. Sound public policies are not simply those that save money; rather, they are policies that identify a social problem and tackle it in order to improve the lives of vulnerable populations. Though raising the age could generate net economic benefits, the

¹⁸⁵ N.C. Barberis, "Thirty Years of Prospect Theory in Economics: A Review and Assessment," *Journal of Economic Perspectives* 27, no. 1 (2013): 175, http://faculty.som.yale.edu/nicholasbarberis/jep_2013.pdf.

¹⁸⁶ S. Kelman, "Cost-Benefit Analysis: An Ethical Critique," *AEI Journal on Government and Society Regulation* (January 1981): 33, [http://fiesta.bren.ucsb.edu/~costello/courses/ESM204/ESM204_2007/Readings/CBA Ethical Critique.pdf](http://fiesta.bren.ucsb.edu/~costello/courses/ESM204/ESM204_2007/Readings/CBA%20Ethical%20Critique.pdf).

use of the cost-benefit tool still creates discomfort among social justice advocates who believe policy should be written to empower people, not to engender profits.

Chapter 5:

Recommendations

Over the last decade, Texas endured a national scandal over its juvenile justice system to eventually become a prominent justice reform leader.¹⁸⁷ Stakeholders from all political ideologies have repeatedly joined together in an effort to decrease incarceration rates, maintain community safety, and cut correctional costs. Despite major reform successes, however, the state's pursuit of "smart justice" continues to leave vulnerable 17-year-olds behind.

As demonstrated in previous chapters, the current age of criminal responsibility in Texas harms 17-year-olds physically, psychologically, developmentally, and economically. Treatment as adults in the justice system fails to reform teenagers' delinquent behaviors. Instead, adult sentences lead impressionable 17-year-olds down a path toward greater abuse, criminality, or, in cases like Rodney Hulin, Jr., toward death. The impacts of the criminal age policy in Texas stretch beyond individual 17-year-olds and their families. The policy also hinders public safety outcomes and drains state and county coffers. Texas' aberrant age policy requires revision. This chapter proposes three key recommendations for facilitating a smooth and cost-effective policy change. Following such a change, 17-year-olds who commit crimes may finally be treated as the kids that developmental scientists and parents know them to be.

The three recommendations described in this chapter are:

- Raise the age of criminal responsibility from 17 to 18 years old.

¹⁸⁷ Editorial Board, "Texas Leads the Way in Needed Criminal Justice Reforms," *The Washington Post*, January 28, 2014, https://www.washingtonpost.com/opinions/texas-leads-the-way-in-needed-criminal-justice-reforms/2014/01/28/83919b72-879d-11e3-916e-e01534b1e132_story.html.

- Set a policy transition period and form an implementation task force before the new law is enacted.
- Design a matching grant program through which counties may receive financial aid to enforce the state's reformed age policy.

(Appendix A includes a suggested timeline for the policy change process.)

RECOMMENDATION 1: RAISE THE AGE OF CRIMINAL RESPONSIBILITY

In 2017, the 85th Texas Legislature should raise the age of criminal responsibility from 17 to 18 years old. The policy change will not alter the state's ability to certify juveniles as adults when they commit the most dangerous and serious crimes; those 17-year-olds may still be transferred to the adult system. Instead, the law should simply alter the existing status quo. As a result, vulnerable 17-year-olds will be funneled into the juvenile justice system by default. Only extreme circumstances may then allow teenagers to face adult criminal charges, prison sentences, and collateral consequences.

Act Now, Not Later

In 2015, the 84th Texas Legislature debated raising the age of criminal responsibility. The House of Representatives approved the measure, but the Senate dissented and instead requested further review of the policy change.¹⁸⁸ Legislators during the 85th legislative session should not delay Texas' raise the age reforms any longer.

¹⁸⁸ T. Langford, and M. Watkins, "Texas Teens Win One, Lose One," *The Texas Tribune*, May 31, 2015, <http://www.texastribune.org/2015/05/31/raise-age-dies-truancy-reform-passes/>.

Independent researchers¹⁸⁹ and state officials¹⁹⁰ have already completed comprehensive reviews, causing stakeholders to reach a widespread consensus in favor of a raise the age policy change. Legislators should capitalize on converging practical and political realities that make 2017 the ideal moment for concrete action.

Practical Considerations

Practical considerations regarding juvenile crime rates could allow state and county governments to comfortably incorporate 17-year-olds into the existing Texas juvenile justice system. Between 2000 and 2014, law enforcement officials reported a 60 percent drop in the total number of juveniles arrested and a 45 percent drop in the number of 17-year-olds arrested across the state.¹⁹¹ When youth arrest rates decline, juvenile courts, probation departments, and facilities have greater unused capacity with which to serve justice-involved youth. Trends in arrest rates, however, can change. Therefore, legislators should exploit current declining rates in order to implement a policy change while the justice system is capable of absorbing an expanded juvenile population.

Juvenile justice reforms passed during the 84th legislative session could also precipitate a drop in the number of youth detained in state juvenile detention centers over the next decade. This reduction in detention rates will further increase the resources available to serve 17-year-olds in the juvenile system. In 2015, the Council of State

¹⁸⁹ See C. Henrichson and V. Levshin, “Cost-Benefit Analysis of Raising the Age of Juvenile Jurisdiction in North Carolina,” *Vera Institute of Justice* (2011): 1-41, <http://www.vera.org/files/cost-benefit-analysis-of-raising-the-age-of-juvenile-jurisdiction-in-north-carolina.pdf>; M. Deitch, R. Breeden, and R. Weingarten, “Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas,” *American Journal of Criminal Law* 40, no. 1 (2012): 1-67, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

¹⁹⁰ Texas House of Representatives, House Committee on Criminal Jurisprudence, *Interim Report to the 84th Legislature* (January 2015): 3-13, http://www.house.state.tx.us/_media/pdf/committees/reports/83interim/House-Committee-on-Criminal-Jurisprudence-interim-report.pdf.

¹⁹¹ Texas Department of Public Safety, *Crime in Texas Reports* (2000-2014), http://dps.texas.gov/administration/crime_records/pages/crimestatistics.htm.

Governments (CSG) Justice Center released a study demonstrating that Texas teens who commit crimes are more likely to avoid re-arrest when they complete their dispositions closer to home.¹⁹² In response to the study, state legislators passed SB 1630 (Whitmire/Turner); the juvenile justice reform package required state- and county-level stakeholders to develop a regionalization plan that will safely and efficiently divert juveniles away from state-level detention facilities and into county-level placements. Analysts estimate that, as a result of SB 1630, up to 80 percent of the juveniles traditionally housed in state lockups could instead be kept in their home communities, where each teen's support systems are stronger and where his or her chances of recidivism will decrease.¹⁹³

In addition to depopulating state-level juvenile facilities, SB 1630 reforms will allow justice leaders to focus limited system resources on hiring more community-based juvenile correctional officials.¹⁹⁴ As a result, 17-year-olds may now be transferred into the existing juvenile system with minimal need for constructing new juvenile detention beds and hiring new probation officers. Most importantly, raising the age at the first available moment will ensure that as many 17-year-olds as possible will reap the rehabilitative benefits of the Texas Legislature's efforts to keep justice-involved youth in their home communities.

¹⁹² T. Fabelo, N. Arrigona, M.D. Thompson, A. Clemens, and M.P. Marchbanks, "An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms," *Council of State Governments Justice Center and The Public Policy Research Institute* (2015): 53, <https://csgjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf>.

¹⁹³ Texas Appleseed, *HB 2398 and SB 1630 Signed into Law*, June 19, 2015, https://www.texasappleseed.org/sites/default/files/EndofSession-GovAbbottSignsBills_6-19-15.pdf.

¹⁹⁴ M. Ward, "Reform Bill: Hold Fewer Juvenile Offenders in State Lockups," *The Houston Chronicle*, March 13, 2015, <http://www.houstonchronicle.com/news/politics/texas/article/Reform-bill-Hold-fewer-juvenile-offenders-in-6133197.php>.

Political Considerations

While bipartisan support wanes for most issues, political momentum soars for cost-effective, evidence-based criminal justice reforms, including raising the age of criminal responsibility. For many supporters, raising the age is viewed as the “obvious next step” to improving Texas criminal justice outcomes.¹⁹⁵

Though legislators did not pass a raise the age bill in 2015, the reform carried widespread support from politically diverse stakeholders. During a hearing held by the House Juvenile Justice and Family Issues Committee in April 2015,¹⁹⁶ every stakeholder who testified spoke in support of the *principle* of raising the age of criminal responsibility; each speaker agreed that treating 17-year-olds as adults in the criminal justice system is both ineffective and developmentally inappropriate. Stakeholders who testified in opposition to the initiative merely wished to expand the timeline that the proposed bills suggested for implementing the new policy. Some of the diverse groups that offered public support for raising the age in 2015 included:

- **Texas legislators**, such as Rep. Gene Wu, Rep. Harold Dutton, Rep. Toni Rose, Sen. Juan Hinojosa, and former Rep. Ruth Jones McClendon;
- **Academic researchers**, such as criminal justice expert Michele Deitch of the LBJ School of Public Affairs and the UT School of Law;
- **Individuals with lived experience in the criminal justice system**, such as members of Helping Young People Excel (HYPE);
- **Child advocates**, such as Texans Care for Children and the Austin Parent Teacher Association;

¹⁹⁵ M. Smith, “Texas Juvenile Justice Reformers: ‘Raise the Age’ Will Rise Again,” *The Juvenile Justice Information Exchange*, June 1, 2015, <http://jjie.org/texas-juvenile-justice-reformers-raise-the-age-will-rise-again/>.

¹⁹⁶ The hearing was held on April 1, 2015. To view the hearing, visit <http://www.house.state.tx.us/video-audio/committee-broadcasts/>.

- **Criminal justice reform advocates**, such as the Texas Criminal Justice Coalition, the ACLU of Texas, the Texas Public Policy Foundation, Texas Appleseed, and Grassroots Leadership;
- **Law enforcement officials**, such as the Dallas, Bexar, and Harris County Sheriffs; and
- **Justice system officials**, such as the Texas Criminal Defense Lawyers Association, District Judge Jeanne Meurer of Travis County, and District Judge Laura Parker of Bexar County.

The most vocal opponent to the 84th Legislature's raise the age movement was Senator John Whitmire (D-Houston), the chair of the Senate Criminal Justice Committee. For over 40 years, Senator Whitmire has served as a state legislator, devoting much of his tenure to reforming the state's adult and juvenile justice systems.¹⁹⁷ In 2015, however, Senator Whitmire opposed the raise the age initiative. He cited the potential pitfalls of implementing SB 1630 reforms that aimed to divert juveniles *out* of the justice system while simultaneously transferring 17-year-olds *into* that same system.¹⁹⁸

In January 2016, however, Senator Whitmire expressed public support for a raise the age bill in Texas.¹⁹⁹ In a speech delivered at the University of Houston Law Center's "Police, Jails, and Vulnerable People Symposium," Senator Whitmire declared that he was open to raising the age of criminal responsibility, particularly for 17-year-olds who commit

¹⁹⁷ The Texas Senate, *Senator John Whitmire: District 15*, accessed April 3, 2016, <http://www.whitmire.senate.state.tx.us>.

¹⁹⁸ P. Michels, "Juvenile Justice Reform Unlikely to Extend to 17-Year-Olds This Session," *The Texas Observer*, April 1, 2015, <https://www.texasobserver.org/juvenile-justice-17-year-olds-texas/>.

¹⁹⁹ J. Whitmire, "Keynote Address: Criminal Justice Reform in Texas" (presentation, University of Houston Law Center Police, Jails, and Vulnerable People Symposium, Houston, TX, January 22, 2016). See Sen. Whitmire's presentation at <https://www.youtube.com/watch?v=jNH4I3F0SYA&list=PLu2WuYWXjUtcxvWsUGuF3KXhTuUJZ2c1t&index=3>.

misdemeanors; however, he also expressed his desire to ensure that Texas communities can accomplish the change without overwhelming juvenile courts, probation departments, and facility staff.²⁰⁰ As previously described, this may be achieved by raising the age at a time when juvenile arrest and incarceration rates are already in rapid decline.

Lessons from Other States

In recent years, other states have undertaken similar raise the age reforms, but each state approached the policy change differently. State legislators and reform advocates in Texas should learn from the experiences of their counterparts in other states in order to maximize the success and impact of the raise the age initiative.

For example, a new Texas law should avoid the pitfalls of the Illinois policy change by raising the age of criminal responsibility for *all* youth under 18. In Illinois, lawmakers initially raised the age only for 17-year-olds who committed misdemeanors, not for those who committed felonies.²⁰¹ This bifurcated approach created so many difficulties that state officials quickly passed new legislation to move 17-year-olds charged with felonies to the juvenile justice system as well.²⁰² Illinois faced two major problems by raising the age of criminal responsibility solely for misdemeanants: 1) the policy created confusion for law enforcement officers, and 2) the policy restricted prosecutors' ability to handle cases against 17-year-olds.²⁰³

²⁰⁰ Ibid. See minute 26:16 for Sen. Whitmire's comments on raising the age of criminal responsibility.

²⁰¹ State of Illinois Department of Human Services, Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction*, accessed April 3, 2016, 30, <http://www.dhs.state.il.us/page.aspx?item=64918>.

²⁰² Office of Juvenile Justice and Delinquency Prevention, *Illinois Raises Age of Juvenile Court Jurisdiction* (July 2013), <http://www.ojjdp.gov/enews/13juvjust/130722.html>.

²⁰³ Texas House of Representatives, House Committee on Criminal Jurisprudence, *Interim Report to the 84th Legislature* (January 2015): 11, http://www.house.state.tx.us/_media/pdf/committees/reports/83interim/House-Committee-on-Criminal-Jurisprudence-interim-report.pdf.

First, law enforcement officers who apprehended 17-year-olds were forced to make quick decisions about the type of criminal offense that was committed. This choice was particularly challenging for crimes that may be classified as either misdemeanors or felonies, such as larceny theft for which the value of the stolen property determines the level of the offense. Once a decision was made about a crime's classification, Illinois officers and court officials had difficulty changing that classification, even in light of new evidence. In particular, stakeholders faced challenges when they attempted to move 17-year-olds back and forth between the adult and juvenile justice systems.²⁰⁴ If Texas lawmakers pursued a similar bifurcated raise the age policy, law enforcement officers would experience the same obstacles. The problem could even be amplified in Texas where about 35 percent of the crimes for which 17-year-olds were arrested in 2014 involved larceny theft and drug possession charges that initially may be judged as either misdemeanors or felonies.²⁰⁵

Second, a bifurcated approach to raising the age can create problems for prosecutors. Prosecutors depend upon their ability to alter charges throughout the justice process in order to make use of new evidence and negotiate plea deals. However, Illinois prosecutors found that this ability was stunted when the state raised the age of criminal responsibility only for 17-year-olds who committed misdemeanors.²⁰⁶ Altering charges became impossible when such actions shifted the jurisdiction of a 17-year-old's case entirely from the adult system to the juvenile system. Thus, a raise the age law in Texas

²⁰⁴ State of Illinois Department of Human Services, Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction*, accessed April 3, 2016, 35, <http://www.dhs.state.il.us/page.aspx?item=64918>.

²⁰⁵ Texas Department of Public Safety, *2014 Crime in Texas* (2015): 76, <http://dps.texas.gov/crimereports/14/citCh9.pdf>.

²⁰⁶ State of Illinois Department of Human Services, Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction*, accessed April 3, 2016, 41, <http://www.dhs.state.il.us/page.aspx?item=64918>.

should circumvent the prosecutorial challenges experienced in Illinois by raising the age of criminal responsibility for *all* justice-involved 17-year-olds, not misdemeanants only.

Finally, Texas lawmakers should explicitly address retroactivity to avoid the confusion that Massachusetts officials faced in 2013. The Massachusetts raise the age law failed to address retroactivity. As a result, individuals who were 17 at the time of their offense but who committed that crime before the policy change took effect sued the state and requested transfer to the juvenile system.²⁰⁷ Texas legislators should bypass similar confusion and court costs by explicitly stating that the raised age of criminal responsibility is not retroactive.

RECOMMENDATION 2: SET A TRANSITION PERIOD AND FORM A TASK FORCE

The timeline for raising the age of criminal responsibility in Texas is critical. Seventeen-year-olds will trickle into the juvenile justice system slowly, especially if legislators do not make the law retroactive. Still, a policy change of this size and significance requires careful planning before the law takes effect. Therefore, Texas should delay the raise the age measure's effective date to ensure that stakeholders have adequate time to prepare for the introduction of 17-year-olds into the juvenile justice system. While the law should be passed in 2017, it should not take effect until September 2018. (See Appendix A for a detailed policy change timeline.)

A transition period from July 2017 to September 2018 is essential for two reasons. First, this time period allows Texas counties to independently make accommodations for the 17-year-olds who will be sent to the juvenile justice system in 2018.²⁰⁸ Local probation

²⁰⁷ Texas House of Representatives, House Committee on Criminal Jurisprudence, *Interim Report to the 84th Legislature* (January 2015): 11, http://www.house.state.tx.us/_media/pdf/committees/reports/83interim/House-Committee-on-Criminal-Jurisprudence-interim-report.pdf.

²⁰⁸ *Ibid*, 12.

departments may use this time to lobby for greater funding from their county commissioners, update their facilities, train new juvenile probation officers, and develop new programs that can address the specific needs of older teenagers.

Second, and most importantly, the transition period will enable state and county leaders to work collaboratively as they anticipate the challenges that the new policy may create.²⁰⁹ Legislators should increase productivity during the transition period by creating a formal task force comprised of diverse state and county stakeholders. After a raise the age bill is passed, the governor should appoint task force members who represent all relevant interest groups, including individuals from rural, urban, and suburban counties. At a minimum, the governor should request participation from the following stakeholders:

- **State agencies**, such as the TJJD, TDCJ, and the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI);²¹⁰
- **Juvenile-specific county agencies**, such as local juvenile probation departments;
- **Law enforcement agencies**, such as the Sheriffs' Association of Texas;
- **Juvenile court officials**, such as local judges, public defenders, and district attorneys;
- **Child welfare advocates**, such as Texans Care for Children;
- **Criminal justice reform organizations**, such as the Texas Criminal Justice Coalition and the Texas Public Policy Foundation; and
- **Individuals with lived experience as youth in the adult justice system**, such as the founders of Helping Young People Excel (HYPE).

²⁰⁹ Ibid, 13.

²¹⁰ The Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) is instrumental in providing incarcerated juveniles and adults with mental health care, especially as they transition into the community. For more about TCOOMMI's work, see the TDCJ and TJJD sections of the Hogg Foundation for Mental Health's 2015 *Mental Health Guide* at <http://hogg.utexas.edu/mh-guide>.

TJJD (the agency most impacted by the policy change) should appoint a representative to serve as the task force's chairperson. It is crucial, however, that individuals with lived experience as 17-year-olds in adult prisons have a voice within the workgroup. These individuals bring a unique closeness to the problem and thus can provide essential input into developing viable solutions.

Between July 2017 and September 2018, the task force should meet at least once per month. As a group, members should analyze potential implementation problems that could arise in Texas communities when the raise the age policy takes effect in 2018. Members should also develop solutions to these problems by empowering local communities to voice their concerns and by communicating with leaders who have instituted similar reforms in other states. Finally, the workgroup should develop mechanisms through which county stakeholders can communicate any unforeseen issues that may arise once the policy takes effect.

After the new policy becomes effective, the task force should continue meeting in order to provide technical assistance to individual counties. If able, task force members may collaborate to resolve issues brought forth by county leaders who are implementing the new state policy. If local challenges must be addressed by statute, the task force should also create a set of formal recommendations on adjusting the raise the age legislation during the 86th legislative session. Then, in early 2019, state lawmakers and county leaders may swiftly pass and implement any final changes that must be made to policies dictating the age of criminal responsibility.

RECOMMENDATION 3: DESIGN A MATCHING GRANT PROGRAM

After the implementation task force is formed, state leaders must also take steps to ensure that the raise the age initiative is adequately funded. Without sufficient support,

TJJD and local juvenile probation departments will not be able to provide 17-year-olds with the rehabilitation that the teenagers require. Therefore, when crafting a bill that raises the age of criminal responsibility, state legislators should design a matching grant program. Using this funding mechanism, county leaders may obtain the financial aid that they need to implement the policy change efficiently and effectively.

The matching grant program can be administered through TJJD's budget appropriation. Legislators should increase the state agency's funding through a budget rider during the next biennium to cover costs projected by the LBB. TJJD may then allocate a portion of this additional funding to policy impacts experienced at the county level. Before the raise the age law takes effect in 2018, local juvenile probation boards located in each county may apply for state funding through TJJD's grant program. In order to disperse funding fairly, the Texas Legislature should appoint an independent budget specialist who can develop the grant's formal criteria and allocation formula.

The matching grant program should be divided into two tiers of aid.²¹¹ The state may allocate the first tier of funding to top priority tasks that counties must complete before the state raises its age of criminal responsibility in September 2018. These tasks may include adding bed capacity to existing juvenile facilities, expanding the juvenile probation workforce, and providing immediate technical assistance to counties that face unanticipated obstacles. The state may allocate the second tier of funding to long-term projects that directly impact 17-year-olds' unique rehabilitative needs. For example, these funds may be granted to juvenile probation departments that wish to develop new programs

²¹¹ In 2013, the Massachusetts Legislature created a two-tiered system to fund the state's raise the age policy. See P.J. Forbes, *The House and Senate Committees on Ways and Means: Raise the Age Legislation* [Memorandum] Boston, MA: Executive Office of Health and Human Services, 2013, <http://webcache.googleusercontent.com/search?q=cache:PoFVpuJltYcJ:www.mass.gov/eohhs/docs/dys/dy-sraisetheagefinal2015.doc+&cd=1&hl=en&ct=clnk&gl=us&client=safari>.

specifically designed for older teenagers, such as job readiness training or independent living courses.

Together, the two tiers of funding will provide structure and consistency to the grant process. Most importantly, the tiers will create flexibility during the implementation phase of the policy change. Before passing a raise the age bill, Texas leaders cannot predict exactly where funding will be needed most. A flexible grant program can help to ensure that dollars flow to the correct stakeholders as the implementation process unfolds.²¹²

Establishing a funding mechanism for a statewide raise the age initiative is essential to garnering public support for the law and addressing the potential costs of the policy change. (See Appendix B for information about how these costs can be estimated before the policy change goes into effect.) However, it is important to note that other states did not experience high costs when altering their own age policies. Between 2010 and 2012, state legislators in Connecticut budgeted almost \$40 million to raise the state's age of criminal responsibility from 16 to 18; by the end of the 2012 budget cycle, local counties left nearly one-third of those funds unspent.²¹³ Similarly, in Illinois, legislators set aside state funds for counties to use after a raise the age bill was passed; no counties requested financial support, allowing Illinois to make the change without an infusion of any new state funds.²¹⁴ In both Connecticut and Illinois, decreasing juvenile crime rates (similar to those seen in Texas) outpaced the influx of 17-year-olds into the juvenile justice system. As a

²¹² Texans Care for Children, *Preparing to Raise the Age: A Stakeholder Convening to Help Texas Get it Right* (January 2015): 8, <http://txchildren.org/Images/Interior/raisetheagereportjanuary2015.pdf>.

²¹³ Texas House of Representatives, House Committee on Criminal Jurisprudence, *Interim Report to the 84th Legislature* (January 2015): 11-12, http://www.house.state.tx.us/_media/pdf/committees/reports/83interim/House-Committee-on-Criminal-Jurisprudence-interim-report.pdf.

²¹⁴ *Ibid.*, 12.

result, cost projections made during the legislative process were overestimated, and the states experienced greater net benefits than originally predicted.²¹⁵

EVALUATION PLAN

During the 2015 legislative session, reform advocates projected substantial positive impacts that could result from raising the age of criminal responsibility in Texas. These impacts included lower recidivism rates, reduced victimization, and improved economic outcomes for justice-involved 17-year-olds. After a raise the age bill is passed, Texas leaders should formally assess and quantify the effects of serving 17-year-olds in the juvenile justice system. Then, lawmakers may determine what changes can be made to further improve outcomes for justice-involved 17-year-olds across the state.

In 2023 during the 88th legislative session, TJJD should release a request for proposals to identify an outside agency that is capable of evaluating the 2018 raise the age policy change. To ensure the independence of the evaluating agency, members of the implementation task force must be barred from performing the follow-up evaluation. Potential evaluators include the University of Texas Center for Social Work Research, the Center for Health and Social Policy (CHASP) at the LBJ School of Public Affairs, and the Texas A&M Public Policy Research Institute. During the 88th legislative session, lawmakers should pass a budget rider to ensure that the policy evaluation is adequately funded. Initial results from the evaluation should be made available to legislators during the 89th legislative session in 2025.

During the 2023-2024 biennium, the evaluating agency should measure three levels of impact. First, the agency should assess **macro-level policy impacts**. For example,

²¹⁵ State of Illinois Department of Human Services, Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction*, accessed April 3, 2016, 6-7, <http://www.dhs.state.il.us/page.aspx?item=64918>.

evaluators should estimate the actual costs of implementing the raise the age initiative by conducting a county-by-county survey. Then, evaluators should analyze population trends within juvenile facilities following the implementation of the new policy. The introduction of 17-year-olds into juvenile facilities should not reverse the downward trend in incarceration rates for all Texas youth because: 1) 17-year-olds should make up only a small portion of total juvenile arrests, and 2) the teens largely commit low-level crimes that do not require incarceration in secure facilities. If evaluators find that juvenile incarceration rates have increased, legislators may wish to assess disparities in sentencing practices between 17-year-olds and other justice-involved youth. The 89th Texas Legislature should then statutorily address these disparities.

Second, evaluators should examine **mezzo-level policy impacts** in Texas communities. Two key measures can illustrate how public safety changed following the raise the age initiative: 1) trends in youth arrest rates and 2) trends in youth recidivism rates. After controlling for other relevant factors, analysts may determine if the policy change altered initial arrest rates and subsequent recidivism rates for 17-year-olds. A decrease in both measures could show that treating 17-year-olds within the juvenile justice system more effectively addresses the underlying causes of criminal activity. In contrast, an increase in these measures could reveal that the policy change encouraged criminal activity; without the threat of the adult criminal justice system, 17-year-olds may engage in more delinquent behaviors and ultimately jeopardize community safety further. Other states, however, have not reported an increase in arrest or re-offense rates as a result of raising the age of criminal responsibility.

Third, evaluators must examine the **micro-level policy impacts** of the raise the age legislation. Most importantly, analysts should study mental health outcomes among 17-year-olds sent to the juvenile justice system. Quality of life assessments and psychological

evaluations may be conducted as juveniles enter the justice system and immediately before they are released from confinement and/or community supervision. Similar assessments should also be conducted for 17-year-olds certified to the adult criminal justice system. After controlling for other factors, evaluators may then draw comparisons between the two groups to illustrate the different mental health outcomes experienced by individuals who are served in the juvenile and adult justice systems. A longer-term evaluation may study other micro-level impacts, such as economic and health outcomes among formerly incarcerated individuals and their families.

Chapter 6:

Conclusion

Over the past decade, Texas legislators revolutionized the state's approach to juvenile justice issues. As the nation's leader in reform, Texas revamped sentencing structures, emphasized innovative diversion strategies, and depopulated state-run juvenile detention facilities. Still, the state continues to leave 17-year-olds behind in its quest to improve juvenile justice outcomes. The age of criminal responsibility in Texas represents an ineffective public policy in need of critical reform. The law, which dates back to 1918, mirrors a tough-on-crime mentality that state leaders have worked hard to alter since the early 2000s. The automatic placement of 17-year-olds in the adult justice system ignores brain science and funnels hard-earned tax dollars toward greater criminality, not future productivity. Most importantly, Texas' age of criminal responsibility directly harms the lives and livelihoods of a vulnerable teenage population.

In this professional report, I described the devastating impacts that occur when lawmakers allow 17-year-olds to serve time in adult prisons. These impacts include high rates of physical and sexual victimization, psychological trauma, developmental delays, and economic losses that inflict harm years after a person's confinement ends. Across the country, highly-publicized deaths of imprisoned 17-year-olds demonstrate the irreparable damage to underdeveloped youth that adult prisons can cause. The stories of Rodney Hulin, Jr. and Kalief Browder, however, are not unique. Instead, they are simply the most well-known tragedies that stand out among an anonymous crowd of abused and isolated teenagers.

Fortunately, there is a better way forward. In the last several years, diverse states, such as Mississippi and Connecticut, raised their ages of criminal responsibility to keep

17-year-olds out of the adult justice system. As a result, they have documented three key benefits:

1. By harnessing the science of brain development, states provided individual 17-year-olds with rehabilitative supports that can improve each teenager's neurological and psychosocial development.
2. Once the teens reentered their communities, they were better equipped to become productive members of society. This bolstered community safety for years after each individual's release.
3. Finally, the policy change reduced recidivism, decreased victimization, and lowered the potential for PREA-related funding losses. Together, these outcomes preserved limited financial resources for state and local governments.

Other states have laid a path toward reform. If Texas lawmakers follow this example, young people, like those described in this report, would face drastically different life outcomes. For example, a young teen like Rodney Hulin, Jr. would not have to fight his way to solitary confinement in order to protect himself against sexual assault. Instead, he would enroll in TJJD's evidence-based programs and avoid the traumas of abuse and isolation.

A thin, frightened boy like T.J. Parsell would not hear a prison psychologist make sarcastic remarks about rape mere hours before he filed into an adult correctional facility. Instead, he would engage with a youth-focused mental health professional who would encourage the teen to uncover his potential, not find protection from an older man.

A bright teen like Glenn Martin would not have to choose between acting as predator or prey. Instead, he could choose among classes, programs, and support systems designed to broaden his mind and strengthen his skillset.

Finally, an introspective teenager like Kalief Browder would not live in solitary confinement for two years of his life, shrouded in paranoia and depression until he could not take it any longer. Instead, he would be alive today, finishing school with his classmates and spending holidays at home surrounded by his family.

Texas lawmakers have a duty to construct public policies that protect the most vulnerable among us, including those who are locked away in the “shadow worlds” of our state prisons.²¹⁶ The year 2017 is not a time for further study; it is a time for action. Seventeen-year-olds are not adults, and our state criminal justice policies must reflect that reality. During the 85th legislative session, policy leaders should continue our state’s progress toward criminal justice reform by raising the age of criminal responsibility across Texas. As a result, we may finally treat 17-year-olds as what they truly are – kids who are deserving of protection, support, and a real chance at a productive and fulfilling life.

²¹⁶ O’Lone v. Estate of Shabazz, 482 U.S. 342 (1987) (Brennan, J., dissenting), <https://supreme.justia.com/cases/federal/us/482/342/case.html>.

Appendix A:

Proposed Timeline for the Raise the Age Initiative

Table 4. Proposed Timeline for the Raise the Age Initiative

Time Period	Task
<p>May 2016 – January 2017 <i>Interim Legislative Session</i></p>	<ul style="list-style-type: none"> • Juvenile probation chiefs, adult probation and parole officials, TJJD leaders, and TDCJ leaders will begin collecting and organizing data to estimate the costs of raising the age of criminal responsibility. • The LBB will begin collaborating with the Texas Association of Counties, Texas Municipal League, and Texas Probation Association to create a survey estimating the costs associated with the policy change. • Advocates will develop a coalition in favor of raising the age of criminal responsibility consisting of justice policy experts and individuals with lived experience in the adult and juvenile justice systems. • Advocates will strategize with lawmakers who are willing to file a raise the age bill and carry it through the 85th legislative session.
<p>January 2017 – June 2017 <i>85th Legislative Session</i></p>	<ul style="list-style-type: none"> • Advocates will coordinate stakeholders to testify in favor of the raise the age bill. • The LBB will develop a fiscal note for the raise the age bill using data provided by the cost survey outlined in Appendix B. • Texas legislators will pass the bill. • The governor will sign the bill into law.

Table 4. Continued

<p>June 2017 – July 2017 <i>Summer Post-Legislative Session</i></p>	<ul style="list-style-type: none"> • The governor will appoint stakeholders to the implementation task force.
<p>July 2017 – September 2018 <i>Transition Period</i></p>	<ul style="list-style-type: none"> • Task force members will meet monthly to analyze potential implementation challenges. • Task force members will develop mechanisms through which county stakeholders can communicate efficiently with the task force after the policy change takes effect. • A budget specialist will design a matching grant program to fund the policy change. • County juvenile boards will begin to apply for and receive state funding, as well as lobby for county funding, plan new programs, and hire new staff.
<p>September 2018 – January 2019 <i>Initial Implementation Period</i></p>	<ul style="list-style-type: none"> • The policy change will take effect. • Task force members will continue meeting to discuss implementation outcomes and challenges. • Task force members will provide technical assistance to local juvenile probation departments and TJJD. • County- and state-level juvenile justice officials will track the impact of the policy change on their juvenile justice population size and programming capacity. • Task force members will create and deliver a set of recommendations for the 86th Texas Legislature on any necessary adjustments that must be made to existing statute regarding the age of criminal responsibility.

Table 4. Continued

<p>January 2019 – June 2019 <i>86th Legislative Session</i></p>	<ul style="list-style-type: none"> • TJJD, TDCJ, and county stakeholders will testify before the Texas Legislature on the initial impacts of the policy change. • Legislators will make any necessary adjustments to statute based on the task force’s findings and recommendations.
<p>June 2019 – January 2023 <i>Interim Sessions and 87th Legislative Session</i></p>	<ul style="list-style-type: none"> • Legislators will continue to implement necessary statutory reforms in order to address unforeseen challenges related to the raise the age initiative.
<p>January 2023 – June 2023 <i>88th Legislative Session</i></p>	<ul style="list-style-type: none"> • Legislators will release a request for proposals (RFP) to appoint an agency capable of evaluating the impacts of the raise the age policy change. • Legislators will pass a budget rider to fund the evaluation plan. • The evaluating agency will be chosen.
<p>June 2023 – January 2025 <i>Evaluation Period</i></p>	<ul style="list-style-type: none"> • The evaluating agency will examine three levels of policy impacts: 1) macro-level impacts, such as economic costs and population trends; 2) mezzo-level impacts, such as youth arrest and recidivism rates; and 3) micro-level impacts, such as mental health outcomes. • The evaluating agency will write and publish a report of its initial findings.

Appendix B:

Estimating the Costs of Raising the Age of Criminal Responsibility in Texas

In order to raise the age of criminal responsibility in Texas, legislators, justice officials, and reform advocates must fully understand the cost implications of the policy change. Costs associated with raising the age were a fundamental concern among Texas stakeholders during the 84th legislative session, just as they were when other states proposed similar reforms over the past several years. By systematically estimating costs associated with this policy change, advocates may supplant worried anecdotes with actual data. Lawmakers and reformers may then use these estimates to pass formal statutory changes to Texas' age of criminal responsibility. Most importantly, the estimates may be used to inform the appropriation process and the distribution of funds among cities and counties that are most impacted by the policy change. Still, it is essential to note that costs experienced in other states after legislators raised the age of criminal responsibility were significantly less than those initially projected by county and state agencies.²¹⁷

POTENTIAL COSTS OF RAISING THE AGE

Table 5 below outlines the potential costs that may arise by raising Texas' age of criminal responsibility in 2017. The costs are broken down into four categories:

1. Law enforcement costs;
2. Court system costs;
3. State-level costs to TJJD; and
4. County-level costs to local juvenile probation departments.

²¹⁷ Texas House of Representatives, House Committee on Criminal Jurisprudence, *Interim Report to the 84th Legislature* (January 2015): 9, http://www.house.state.tx.us/_media/pdf/committees/reports/83interim/House-Committee-on-Criminal-Jurisprudence-interim-report.pdf.

Table 5. Potential Costs of Raising the Age of Criminal Responsibility

Category	Cost Examples
Law enforcement costs	<ul style="list-style-type: none"> • Increased arrest expenditures
Court system costs	<ul style="list-style-type: none"> • Increased expenditures to try 17-year-olds as juveniles, not adults • Hiring costs to add more judges, attorneys, and other officials to the juvenile court system in order to accommodate the increased volume of juvenile court cases • Training expenditures for juvenile court judges, attorneys, and other court officials to serve older teens
State-level costs to TJJD	<ul style="list-style-type: none"> • Hiring costs to increase the capacity of diversion services • Increased expenditures to commit 17-year-olds to state secure facilities and halfway houses • Hiring costs to provide older teens with age-appropriate intake/orientation services, educational/vocational programming, treatment services, and reentry assistance while they are detained in state secure facilities and halfway houses • Potential capital investments to increase the number of beds available in state secure facilities and halfway houses
County-level costs to local juvenile probation departments	<ul style="list-style-type: none"> • Hiring costs to increase the capacity of diversion services • Increased expenditures to detain 17-year-olds in county-level pre-adjudication facilities • Increased expenditures to detain 17-year-olds in county-level post-adjudication facilities • Potential capital investments to increase the number of beds available in county-level pre- and post-adjudication facilities • Hiring costs to provide older teens with age-appropriate intake/orientation services, educational/vocational programming, treatment services, and reentry assistance while they are detained in pre- and post-adjudication facilities • Hiring costs to accommodate the increased volume of juvenile probation caseloads

As previous analyses demonstrate, the costs listed in Table 5 will be offset by savings and benefits that accrue to taxpayers, avoided victims, and rehabilitated teenagers.²¹⁸ However, those savings and benefits are more challenging to estimate than are most costs. For example, decreases in lifetime recidivism rates and reduced reliance on social services occur many years after a teen's sentence is finished, which hinders researchers' ability to monitor and measure these key outcomes. Further, legislators largely focus upon taxpayer costs that result from a policy change, rather than the long-term benefits that may accrue to formerly incarcerated persons and their families. As a result, reform advocates must be prepared with data demonstrating the direct costs of raising the age in order to determine what appropriations will be necessary to implement the policy change effectively and efficiently.

ESTIMATING THE COSTS OF RAISING THE AGE OF CRIMINAL RESPONSIBILITY

To develop a cost estimate, researchers may undergo a five-step process:

1. Assemble a team of knowledgeable stakeholders to collaborate in the cost analysis.
2. Conduct preliminary interviews that will inform the focus and direction of the cost analysis.
3. Use information from the initial interviews to design a cost survey for adult and juvenile justice officials.
4. Distribute the survey to a sample of adult and juvenile justice officials across Texas.
5. Interpret the survey data and release the cost estimates to the Texas Legislature and the general public.

²¹⁸ M. Deitch, R. Breeden, and R. Weingarten, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *American Journal of Criminal Law* 40, no. 1 (2012): 47-56, <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

Step 1: Assemble a Team of Knowledgeable Stakeholders

To begin the cost analysis, reform advocates should bring together a group of knowledgeable stakeholders who can collaborate to reach an accurate cost estimate. Team membership could include:

1. **Legislative Budget Board analysts**, particularly those on the Criminal Justice Data Analysis Team who have ample experience in developing fiscal notes regarding changes to justice system policies;²¹⁹
2. **Independent researchers** who have studied raise the age outcomes in other states;
3. **Representatives from Texas advocacy groups**, particularly policy analysts from Texans Care for Children who organized a convening in September 2014 to discuss raising the age of criminal responsibility during the 84th legislative session;²²⁰ and
4. **Former employees of the juvenile justice system**, such as former county juvenile probation chiefs, district judges, and/or juvenile facility line staff who possess a deeper understanding of how this policy change will impact the daily operations of juvenile court dockets, detention facilities, halfway houses, and probation departments.

Step 2: Conduct Preliminary Interviews

After the research team is assembled, members should conduct interviews with relevant agency leaders. Information gathered from these interviews may then influence the focus and direction of the cost survey that will be distributed to adult and juvenile justice officials across Texas. Interviewees can be divided into four main categories:

²¹⁹ See U. Parks, *Fiscal Note, 84th Legislative Regular Session in Re: HB 1205 by Dutton* [Memorandum] Austin, TX: Legislative Budget Board, April 1, 2015, 1-3, <http://www.capitol.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB01205I.pdf#navpanes=0>.

²²⁰ For more on this convening, see Texans Care for Children, *Preparing to Raise the Age: A Stakeholder Convening to Help Texas Get it Right* (January 2015): 1-16, <http://txchildren.org/Images/Interior/raisetheagereportjanuary2015.pdf>.

1. Adult criminal justice leaders;
2. Juvenile justice leaders;
3. Law enforcement officials; and
4. Leaders who helped bring about similar policy changes in other states.

Adult Criminal Justice Leaders

The research team should conduct tours and interviews within a subset of urban, rural, and suburban prisons and jails in order to gather the following information:

- The current capacity of diverse prison and jail facilities that house adult inmates;
- The number of 17-year-olds who are typically served within these facilities each year;
- Overall trends that facility administrators have noticed among incarcerated 17-year-olds (e.g., population size, educational needs, and treatment needs);
- The services that are currently available to 17-year-olds, as well as gaps and challenges within in this service delivery system;
- The mechanisms that staff members use to separate 17-year-olds from older inmates in order to comply with PREA's Youthful Inmate Standard;
- The challenges that facility administrators face as a result of PREA's Youthful Inmate Standard; and
- Potential costs that facility administrators (particularly those within local jails) may incur to retrofit their facilities in order to attain and/or maintain PREA compliance.

Furthermore, the research team should contact adult probation and parole officials to determine how many individuals who were 17 at the time of their offense are served annually by their departments. These officials may also provide information on the unique

treatments, programming, and social supports that younger individuals require as they complete their probation or parole sentence.

Juvenile Justice Leaders

Research team members should also conduct interviews and tours within juvenile justice settings. For example, in state- and county-operated detention facilities, the team should gather the following information:

- The current bed capacity and staffing levels within diverse urban, rural, and suburban facilities;
- The current programming opportunities available to detained youth, particularly programs that cater to older teens, such as independent living courses;
- The mechanisms that staff members use to separate the youngest juveniles from the oldest juveniles within each facility;
- The current probation caseloads for staff members who provide supervision services in the community; and
- The initial impacts of juvenile justice reforms passed during the 84th legislative session, particularly SB 1630 reforms that aimed to keep justice-involved juveniles out of state-run facilities and closer to their home communities.

The research team should also contact juvenile court officials, including district judges, prosecutors, and defense attorneys who serve juveniles across the state. These justice officials can educate the research team on the typical size of their caseloads and the likely impact that a raise the age initiative will have on county juvenile court systems.

Law Enforcement Officials

Team members should also interact with law enforcement officials who have experience within both the adult and juvenile justice systems. The research group may

interview city and county police officers to determine how their encounters with 17-year-olds differ from those with younger teenagers who commit similar offenses. The team should gather information on how these encounters differ in terms of procedures, costs, diversion opportunities, and typical outcomes.

Leaders from Other States

Finally, the research team should contact leaders who were instrumental in implementing raise the age initiatives in other states. In particular, the group should interview leaders from Illinois who attended the raise the age convening hosted by Texans Care for Children in September 2014. These leaders represented diverse agencies, such as the Cook County Juvenile Probation Department²²¹ and Northwestern University's Children and Family Justice Center.²²² Officials from the same or similar agencies could provide an update on the costs that Illinois experienced when legislators raised the age of criminal responsibility first for 17-year-old misdemeanants and then for 17-year-old felons.

Step 3: Design a Cost Survey

After the research group conducts facility tours and stakeholder interviews, team members should use that information to design a cost survey for adult and juvenile justice officials. With this survey, the team may formally request cost estimates from stakeholders representing agencies that will be impacted most by the proposed policy change. Sample questions are listed below in Table 6.

²²¹ M. Spooner, *Texas Raise the Age* (September 2014): 1-19, <http://txchildren.org/Images/Interior/rta/spooner.pdf>.

²²² S. Kollmann, *Raising the Age of Juvenile Court Jurisdiction: The Future of 17-Year-Olds in Illinois' Justice System* (September 2014): 1-43, <http://txchildren.org/Images/Interior/rta/kollmann.pdf>.

Table 6. Cost Survey Sample Questions

Question Type	Sample Questions
Adult justice system questions	<ul style="list-style-type: none"> • How many 17-year-olds do you currently serve in your facility? • What percentage of the inmates who are currently within your custody are 17 or were 17 at the time of their offense? • Does your facility separate 17-year-olds from older inmates by sight and sound to comply with PREA's Youthful Inmate Standard? • If your facility does separate 17-year-olds from older inmates, how do you accomplish this separation? • If your facility does separate 17-year-olds from older inmates, what challenges and costs does this task create? • If your facility does not separate 17-year-olds from older inmates, what changes would facility administrators need to make in order to comply with PREA's Youthful Inmate Standard (e.g., increased staffing levels, architectural updates, etc.)? • If legislators raised Texas' age of criminal responsibility, what costs and/or benefits would your facility experience?
Juvenile justice system questions	<ul style="list-style-type: none"> • How many individuals aged 17 and older do you currently serve within your agency? • What mechanisms do you use to separate older teens from younger teens who are served within your agency? • If legislators raised Texas' age of criminal responsibility, would your agency require greater resources to accommodate this change? • Would your agency require increases in staffing levels to accommodate this policy change? If so, what type of staff and how many additional employees would your agency require? • Would your agency require increases in bed capacity to accommodate this change? If so, what type of beds and how many additional beds would your agency require? • Would your agency need technical assistance from the state to serve 17-year-olds within your county probation department? If so, what type of technical assistance would you require? • What one-time costs do you anticipate to incur if legislators raise Texas' the age of criminal responsibility? • What recurring costs do you anticipate to incur if legislators raise Texas' age of criminal responsibility?

The research team may also choose to design separate survey instruments for other stakeholders who anticipate significant costs associated with this policy change, such as juvenile court officials.

Before distributing the survey, the research team should take two intermediate steps. First, team members should collaborate with the Texas Association of Counties, Texas Municipal League, and the Texas Probation Association in order to review and improve the survey's language. These agencies may also assist the research team in identifying a sample of diverse city, county, and state officials who may participate in the survey.

Second, the team should hold a series of focus groups with representatives from TJJD, TDCJ, county juvenile probation departments, and adult probation and parole departments. The focus groups will provide valuable feedback that will enable team members to polish the survey instrument before it is distributed across the state.

Step 4: Distribute the Survey.

Next, the research team should distribute the cost-estimating survey to a sample of adult and juvenile justice officials across Texas. Entities such as the Texas Association of Counties, Texas Municipal League, and Texas Probation Association may provide assistance in building this sample of participants and increasing response rates. Survey participants may include (but are not be limited to):

- TDCJ administrators who manage facilities that currently house 17-year-olds, such officials at the Clemens Unit in Brazoria County, Texas;
- Adult probation and parole chiefs whose departments currently serve individuals who were 17 at the time of their offense;

- TJJD administrators who manage the agency's five state-operated juvenile detention facilities;
- TJJD administrators who manage the state's eight halfway houses, which serve youth with mental illness and substance use issues before they are formally released into the community;
- County juvenile probation officials who manage pre- or post-adjudication facilities for justice-involved youth; and
- County juvenile probation officials who administer community supervision for justice-involved youth.

Again, team members may also choose to design separate survey instruments for other justice stakeholders (such as law enforcement officers and juvenile court officials) if these officials predict that raising the age of criminal responsibility will create significant costs within their agencies. Surveys for these individuals could emphasize differential costs associated with juvenile and adult arrests and current juvenile court capacities.

Step 5: Interpret and Release Survey Results

Finally, the research team should interpret the survey data and formally release cost estimates to legislators and the general public. Before disseminating survey results, however, the team should pinpoint any outliers within the survey data and follow-up with those respondents. For example, if one county juvenile probation chief predicts that raising the age of criminal responsibility will cost much more for his or her county than other chiefs predicted for similar counties, the research team should inquire about this estimate and determine its accuracy. This check on participants' responses could combat any individual's incentive to overestimate the costs associated with raising the age of criminal responsibility and ultimately lead to a more accurate final estimate.

Once survey results are released, legislators, justice leaders, advocates, and budget experts may use the data to influence bill proposals, appropriations requests, fiscal notes, and criminal justice policy impact statements. As a result, the raise the age initiative will be informed by concrete data rather than by unsubstantiated rhetoric.

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